

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parental Relationship of
F.F., Mother, and D.K.F.,
Minor Child,

F.F.,

Appellant-Respondent,

v.

December 12, 2023

Court of Appeals Case No.
23A-JT-494

Appeal from the
Marion Superior Court

The Honorable
Scott B. Stowers, Magistrate

Trial Court Cause No.
49D09-2009-JT-581

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Appellee-Guardian Ad Litem.

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

- [1] F.F. (“Mother”) is the mother of D.K.F. (“Child”), and her parental rights were terminated by a judgment issued by the trial court. Mother appeals, claiming the trial court erred because its conclusions were not supported by clear and convincing evidence, namely: (1) that there was a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside the home would not be remedied; (2) that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of Child; and (3) that termination of parental rights was in the best interests of Child. Finding no error, we affirm.

Facts and Procedural History

- [2] Mother gave birth to Child on February 23, 2018, when she was sixteen years old. The Indiana Department of Child Services (“DCS”) became involved with Mother and Child around the same time because it was reported that Mother

had used illegal drugs during her pregnancy, and Child's meconium tested positive for marijuana at birth. Mother started using marijuana when she was fifteen years old. After Child's birth, Mother tested positive for marijuana on March 1, and March 5, 2018. At the time of Child's birth, Mother was a child in need of services ("CHINS") herself because her mother had abandoned her.

[3] On March 22, 2018, DCS filed a petition alleging that Child was a CHINS because Mother (1) had failed to provide Child with a stable, safe, and appropriate living environment free from substance abuse; (2) lacked the financial means and parenting skills required to adequately meet Child's needs; (3) lacked stable housing for Child; and (4) had not ensured that Child attend all of his newborn medical appointments. DCS removed Child from Mother's care on the same date and placed Child in kinship placement. Because of her CHINS status, Mother was placed in foster care at that time.

[4] On August 1, 2018, the trial court adjudicated Child a CHINS based on Mother's admission that she "need[ed] assistance with housing and therefore the coercive intervention of the court is needed." Ex. Vol. p. 51. At the dispositional hearing on August 29, 2018, the trial court issued its dispositional order requiring Mother to (1) engage in home-based therapy and follow recommendations, (2) engage in home-based case management and follow recommendations, (3) submit to random drug/alcohol screens with any non-completed requests resulting in a positive indication, and (4) participate in a substance abuse assessment in the event of a positive screen for any illicit substance not prescribed to her.

- [5] During the time that the case was pending, Mother was incarcerated five times with her longest term of incarceration being from January 2021 to April 2021. Her most recent term of incarceration was from October 2022 to December 11, 2022. Throughout the entire case, Mother had four criminal convictions, including Level 6 felony pointing a firearm, Class A misdemeanor attempted theft, Class B misdemeanor battery, and Class A misdemeanor criminal trespass. Although Mother consistently called Child while Mother was in jail, her calls were inconsistent when she was not incarcerated.
- [6] Mother was ordered to participate in home-based case management. When she first began these services, her goals were to graduate from high school and to reunify with Child. Over time, her goals changed to include obtaining stable housing and employment. Her participation in home-based case management was inconsistent, partly because of Mother's periods of incarceration. When Mother was not incarcerated, she moved frequently. Once she turned eighteen, she moved at least three times, remaining in no residence more than three months, and was homeless at least three times. Prior to her most recent period of incarceration in late 2022, Mother resided with her aunt, but her aunt was evicted from the home while Mother was incarcerated. She also had problems maintaining employment, usually because of issues of not having transportation. DCS provided bus passes to Mother whenever she requested them, but she rarely did so.
- [7] Mother's compliance with her other court-ordered services was also inconsistent. As for visitation with Child, in the beginning of the CHINS case,

Mother frequently visited with Child but became less consistent over time, partly because she was incarcerated. She only had three visits with Child since July 2022. She missed several parenting sessions because of oversleeping, work conflicts, car accidents, and incarcerations. When Mother did have visitation with Child, she was attentive and caring, and there were no safety concerns. Mother's visits remained supervised throughout the duration of the case, and although DCS recommended Mother have unsupervised visits with Child, that never occurred because of Mother's incarceration and lack of consistent drug screens. At the time of the termination hearing, Mother had the opportunity for weekly visits with Child, but had only exercised one day over the approximately three weeks since she was released from incarceration.

[8] Mother was ordered to participate in home-based therapy to address her trauma and substance abuse issues. She had been diagnosed with chronic depression, anxiety, and post-traumatic stress disorder. However, she did not consistently engage in home-based therapy and her last date of participation was in July 2022. Mother had multiple referrals for home-based therapy, but they were closed due to her inconsistent participation. Mother also failed to submit to random drug screens as ordered by the trial court. By May 20, 2020, she only submitted to one drug screen, which was positive for marijuana. Although Mother had a positive drug screen, and a referral for a substance abuse assessment was issued, Mother did not complete the assessment. Mother acknowledged that she failed to participate in services but blamed her failure on being incarcerated.

[9] On September 4, 2020, approximately two and a half years after Child had been removed from Mother’s care, DCS filed a petition to terminate Mother’s parental rights as to Child. The trial court held the termination hearing nearly two and a half years later on January 3, 2023, at which point Child was five years old. At the time of the hearing, Mother had been out of jail for several weeks but did not have stable employment or housing and was living temporarily with a friend. At that time, Mother had not submitted to drug screens for several months. She admitted that she was currently unable to care for Child.

[10] Evidence was presented that Child was bonded to his pre-adoptive parent and was doing well in his placement. Child had been placed in the same home since near the beginning of the case, and it was the only home Child had ever known. The guardian ad litem (“GAL”) testified that termination was in Child’s best interest and that permanency and stability were important for Child. Although the GAL acknowledged that there was a bond between Mother and Child, she felt that Mother could not provide permanency and stability for the child, as evidenced by her pattern of conduct. The GAL noted that the ongoing proceedings were interjecting uncertainty and instability into Child’s life, and with the lengthy duration of the proceedings, which had continued for almost five years, Child could not achieve permanency and stability. Given the pattern of Mother’s conduct throughout the case, the GAL did not believe that Mother had the ability to achieve stability, even if given more time. The family case manager (“FCM”) agreed that termination was in

Child's best interest and testified that she believed that Child would be at risk if the parent-child relationship was continued because he would have no stability. DCS's plan for Child was adoption.

[11] On February 9, 2023, the trial court issued its order terminating Mother's parental rights noting that, in the almost five years that the case had been pending, Mother had failed to complete any services despite multiple referrals, never demonstrated any stability for more than a couple of months, had not established that she was free from illegal substances due to not submitting to drug screens, failed to participate in mental health treatment, had been inconsistent in exercising her parenting time, and had never independently parented Child throughout the vast majority of his life. The trial court concluded that the continuation of the parent-child relationship would serve as a barrier for Child to obtain permanency and stability. Mother now appeals.

Discussion and Decision

[12] While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children, the law allows for the termination of parental rights based on a parent's inability or unwillingness to meet parental responsibilities. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013). Thus, parental rights are subordinated to the child's interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013). The purpose of terminating parental rights is not to punish the parent but to protect

the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the child’s emotional and physical development is threatened. *Id.* The trial court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[13] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). In evaluating the trial court’s findings and conclusions for an order terminating parental rights, we review only for clear error, and we apply a two-tiered standard of review. *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). First, we must determine whether the evidence supports the findings,¹ and second, we determine whether the findings support the judgment. *Id.* “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *Id.* If the evidence and reasonable inferences support the trial court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied.*

¹ Mother does not challenge the trial court’s findings of fact, so she has waived any arguments relating to the unchallenged findings. See *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

[14] Before an involuntary termination of parental rights may occur, the State must 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 [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). The State's burden of proof for establishing these allegations is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Moreover, "if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship." I.C. § 31-35-2-8(a) (emphasis added).

A. Conditions Not Remedied

- [15] Mother first argues that the trial court’s conclusion that there was a reasonable probability that the conditions resulting in the removal of Child and the reasons for placement outside of the home would not be remedied was not supported by sufficient evidence. In determining whether there is a reasonable probability that the conditions that led to a child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, we must determine what conditions led to the child’s placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*
- [16] In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing a parent’s recent improvements against “‘habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.’” *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). Under this rule, “[trial] 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.” *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011).
- [17] In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent’s behavior will not change. *In re Involuntary Termination of Parent-*

Child Relationship of Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). “We entrust th[e] delicate balance to the [trial] court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *E.M.*, 4 N.E.3d at 643. When determining whether the conditions resulting in removal would be remedied, the trial court may consider the parent’s response to the offers of help from DCS or the service providers. *D.B.*, 942 N.E.2d at 873.

[18] Here, Child was removed from Mother’s care because Mother used illegal drugs during her pregnancy, Child’s meconium tested positive for marijuana at birth, Mother did not have stable housing, and Mother had failed to take Child to his newborn medical appointments. Generally, Mother had failed to provide Child with a safe, stable, and appropriate living environment free from substance abuse. At the time that Child was removed, Mother was only sixteen years old and had been adjudicated a CHINS herself due to the fact that her own mother had abandoned her. Because of her status as a CHINS and because she was a minor, Mother lacked the financial means, parental skills, and stable housing to meet Child’s needs without assistance. Mother admitted to frequently using marijuana and tested positive several times in the first weeks of Child’s life.

[19] In its order terminating the parental rights of Mother, the trial court found that, over the nearly five-year duration of this case, Mother had not completed any services despite multiple referrals and that her lack of stability remained a major concern because she was unable to maintain stability for more than a couple months at a time. The evidence established that Mother, who was twenty-one

at the time of the hearing, had issues with marijuana and admitted using the drug since she was fifteen years old. At the time of the termination hearing, although Mother claimed that she was substance free, she had not demonstrated such and had not submitted drug screens for months prior to the hearing. The evidence also revealed that Mother was incarcerated five times while the case was pending, with her longest term of incarceration being from January 2021 to April 2021. Prior to the termination hearing, she had only been released from her most recent incarceration for a few weeks, having been in jail from October 2022 to December 11, 2022. Over the duration of the case, Mother had criminal convictions for Level 6 felony pointing a firearm, Class A misdemeanor attempted theft, Class B misdemeanor battery, and Class A misdemeanor criminal trespass and had violated the conditions of her probation.

[20] Throughout the nearly five years of having the opportunity to receive services, Mother repeatedly fell into a pattern of starting to engage with the services with no follow through. She had multiple referrals for home-based therapy, but they were all closed due to her inconsistent participation with her last date of participation being in July 2022. She also had referrals for home-based case management, but her participation was inconsistent, partly because she was incarcerated. Some of Mother's goals of her home-based case management were to maintain stable housing and employment, which she never attained. After her own CHINS case was closed, Mother moved at least three different times, and none of her housing lasted more than three months. Mother had

been homeless three times since she turned eighteen, and at the time of the termination hearing, she was temporarily staying with a friend. Mother also had problems maintaining a job, usually because of issues of not having transportation even though she could obtain bus passes through DCS.

[21] Mother was also inconsistent in her visitations with Child throughout the case. Although Mother frequently visited with Child in the beginning of the case, she became less consistent over time, partly because of her incarcerations. At the time of the hearing, she only had three visits with Child since July 2022, one being the day before the hearing. Mother's parenting time remained supervised throughout the duration of the case and never progressed to unsupervised because of Mother's incarcerations and failure to submit to drug screens.

[22] Mother's arguments challenging the trial court's conclusion that the conditions that resulted in Child's removal and continued placement outside the home will not be remedied are merely requests to reweigh the evidence, which we do not do. *E.M.*, 4 N.E.3d at 642. Here, Mother had many opportunities over the almost five-year duration of this case to engage in services and participate in visitations with Child but failed to comply with the orders in the CHINS proceedings, demonstrated a history of instability, failed to consistently visit Child, committed crimes, and failed to improve her ability to safely and permanently parent Child. Child "cannot wait indefinitely for [a parent] to work toward preservation or reunification.'" *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quoting *E.M.*, 4 N.E.3d at 648), *cert. denied*. We, therefore, conclude that the trial court's conclusion that there was a reasonable probability

that the conditions which resulted in Child's removal and continued placement outside the home would not be remedied was supported by sufficient evidence.²

B. Termination in Best Interests of Children

[23] Mother also argues that the trial court's conclusion that termination was in the best interests of Child was not supported by clear and convincing evidence. In determining what is in the best interests of the child, a trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*), *trans. dismissed*. In doing so, the trial court must subordinate the interests of a parent to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* (citing *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*). A parent's historical inability to provide a suitable, stable home environment along with the parent's current inability to do so supports a finding that termination is in the best interests of the child. *In re A.P.*, 981 N.E.2d at 82. Testimony of the service providers, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to

² We need not address whether the trial court properly concluded that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to Child's well-being because Indiana Code section 31-35-2-4(b)(2)(B) is written such that, to properly effectuate the termination of parental rights, the trial court need only find that one of the three requirements of subsection (b)(2)(B) has been established by clear and convincing evidence. *See* Ind. Code § 31-35-2-4(b)(2)(B); *A.D.S. v. Ind. Dep't Child Servs.*, 987 N.E.2d 1150, 1157 n.6 (Ind. Ct. App. 2013), *trans. denied*. Because we have concluded that the trial court's determination that the conditions for Child's removal and continued placement outside of the home would not be remedied was supported by clear and convincing evidence, we do not need to reach this argument.

show by clear and convincing evidence that termination is in the child's best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *In re A.K.*, 924 N.E.2d at 224. Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* (citing *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003)).

[24] Our review of the totality of the evidence, at the time of the termination hearing, leads to the inescapable conclusion that, although almost five years had passed, Mother had not appreciatively improved her ability to parent Child and offer him the stability and permanency that he required. Mother had sporadic compliance with the trial court's orders but remained far from any reasonable measure of compliance. Mother was still displaying the same instability in housing and employment that had been occurring throughout the case, and although she had no pending criminal matters and claimed to be substance free, she had only recently been released from jail at the time of the termination hearing. Mother simply failed to make the changes necessary to provide Child with a safe, stable, and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Mother would not remedy the reasons for Child's removal from her care. Additionally, both the GAL and the FCM testified that termination was in the best interests of Child because Mother was not able to provide the

stability and permanency that Child needed and deserved. The GAL noted that the ongoing proceedings were interjecting uncertainty and instability into Child's life and, given the pattern of Mother's conduct throughout the case, the GAL did not believe that Mother had the ability to achieve stability, even if provided more time. The FCM testified that she believed that Child would be at risk if the parent-child relationship was continued because he would have no stability.

[25] Mother argues that she needed more time to be able to demonstrate that she could provide a permanent home for Child. To the extent Mother argues that she planned move into her own apartment and had the possibility of future employment, the trial court is to assess a parent's fitness to care for her children at the time of the termination hearing. *See In re B.D.J.*, 728 N.E.2d 195, 202 n.1 (Ind. Ct. App. 2000). Mother's future plans were therefore not evidence upon which the trial court could base its decision. *Id.*

[26] The trial court "need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship." *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Child should not have to wait any longer for Mother to be able to provide him with the opportunity to enjoy the stability and permanency that is essential to his development and overall well-being. The trial court's conclusion that termination of Mother's parental rights was in Child's best interests was supported by clear and convincing evidence.

[27] We, therefore, conclude that the trial court did not err in its judgment terminating the parental rights of Mother to Child.

[28] Affirmed.

Altice, C.J., and May, J., concur.