

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

J.P., G.V., L.P., and M.P.
(Minor Children),

and

M.K.P (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

October 19, 2023

Court of Appeals Case No. 23A-JT-550

Appeal from the Elkhart Circuit
Court

The Honorable Elizabeth Bellin,
Magistrate

The Honorable Michael A.
Christofeno, Judge

Trial Court Cause No.
20C01-2208-JT-00025
20C01-2208-JT-00026
20C01-2208-JT-00027
20C01-2208-JT-00028

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] M.P. (“Mother”) appeals the involuntary termination of her parental rights as to her four minor children. Mother presents one issue on appeal, which we restate as follows: Whether the trial court’s decision to terminate Mother’s parental rights was clearly erroneous.

[2] We affirm.

Facts and Procedural History

[3] Mother has four minor children with E.P. (“Father”): G.V., born July 25, 2011; M.P., born March 6, 2013; L.P., born October 18, 2015; and J.P., born November 28, 2016 (collectively, the “Children”).¹

[4] In March 2020, while living with the Children in Georgia, Mother was arrested for allegedly wrapping her hands around G.V.’s neck, leaving marks. One of the conditions of her bond for this offense was to have no contact with the Children.

¹ There are minor discrepancies in the record regarding the birthdates of L.P. and J.P.

- [5] In July 2020, Mother was living in a camper at a KOA campground in Middlebury, Indiana. At that time, Mother was still bound by the conditions of her bond in Georgia.
- [6] On July 4, 2020, the Elkhart County Sheriff's Office responded to a report of two runaway children at the KOA campground where Mother was staying. Upon arrival, police officers observed marks on G.V.'s face and neck, which Mother allegedly caused. The responding police officers noted that Mother smelled of alcohol and had abrasions on her face and arms, which she alleged G.V. caused.
- [7] Shortly thereafter, a case manager from the Elkhart County office of the Indiana Department of Child Services ("DCS") arrived on scene in response to a report that Mother "had slammed G.V.'s head on a couch and marks were observed on G.V.'s neck." Tr. Vol. VI at 57. The responding DCS worker observed marks on the left side of G.V.'s face.
- [8] G.V., who was almost nine years old at the time, told the DCS worker and a police officer that (1) Mother "had put her hands around his neck trying to choke him and he could not breathe"; (2) Mother "had took his hand and was hitting herself with it, and he responded by trying to defend himself and then ran outside"; and (3) Mother "has a 'beer problem' and drinks alcohol a lot." Tr. Vol. VI at 57.
- [9] M.P., who was seven years old at the time, told the DCS worker and police officer that she and G.V. "had to jump out of the fire escape window to run

away” because Mother “kept trying to grab G.V.’s neck, and G.V. was defending himself in the process.” Tr. Vol. VI at 57. L.P. and J.P. were not interviewed because they were only three and four years old at the time.

- [10] Father, who had left just prior to the incident between Mother and the Children, told the responding DCS worker that he and Mother had been arguing and that she had consumed several beers. Father also told the DCS worker about the similar allegations against Mother in Georgia from March 2020.
- [11] As a result of the incident on July 4, 2020, the Children were removed from Mother’s care the same day. Two days later, on July 6, 2020, DCS filed a petition alleging each of the Children was a Child in Need of Services (“CHINS”) based on Mother’s alleged substance abuse, physical abuse of G.V., and neglect of the Children. On July 31, 2020, DCS filed an amended petition which added allegations that Mother sexually abused the Children.
- [12] Father died in August 2020. Less than two weeks after Father’s death, Mother admitted that the Children were CHINS. The trial court granted wardship of the Children to DCS pursuant to a dispositional decree on September 22, 2020.
- [13] When the Children were first removed from Mother’s care, they were placed with relatives. Soon thereafter, the Children were placed in three separate foster homes because their needs and behaviors were too much for any one caregiver. Eventually, three of the children were placed with paternal grandmother, and the fourth child was placed with paternal grandfather.

[14] On August 18, 2022, DCS filed a petition to involuntarily terminate Mother’s parental rights to the Children. A factfinding hearing on the termination petition was held on February 2 and 3, 2023. M.P. and G.V. had refused to visit Mother for at least seven months before the factfinding hearing, and L.P. and J.P. had refused to visit Mother for approximately two months before the factfinding hearing.

[15] After all the evidence was presented, the trial court terminated Mother’s parental rights on February 13, 2023. This appeal ensued.

Discussion and Decision

Standard of Review

[16] Mother challenges the trial court’s termination of her parental rights over the Children. “Parents have a fundamental right to raise their children—but this right is not absolute. When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Matter of Ma.H.*, 134 N.E.3d 41, 45–46 (Ind. 2019) (internal citations omitted) (citing *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013)), *cert. denied*.

[17] To terminate Mother’s parental rights, DCS had to prove by clear and convincing evidence, that, among other things,

(B) one of the following is true:

(i) there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for

placement outside Mother's home will not be remedied,

- (ii) there is a reasonable probability that the continuation of Mother's relationship with each of the Children poses a threat to the well-being of the Children, or
- (iii) each of the Children have, on two separate occasions, been adjudicated a child in need of services;

(C) termination is in the best interests of the Children; and

(D) there is a satisfactory plan for the care and treatment of the Children.

[18] See Ind. Code § 31-35-2-4(b)(2); *id.* § 31-37-14-2.

[19] We will affirm a trial court's termination of parental rights unless that decision is clearly erroneous. *Matter of Ma.H.*, 134 N.E.3d at 45 (citing *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014)). A trial court's termination decision is clearly erroneous if the court's findings of fact do not support its legal conclusions or if the legal conclusions do not support its ultimate decision. *Id.* (citing *In re E.M.*, 4 N.E.3d at 642). We will not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's decision. *Id.* (citing *In re K.E.*, 39 N.E.3d 641, 646 (Ind. 2015)).

[20] Furthermore, we accept as true any findings which Mother does not challenge on appeal. See *R.M. v. Indiana Dep't of Child Servs.*, 203 N.E.3d 559 (Ind. Ct. App. 2023) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)). Here,

Mother challenges only ten findings and conclusions; we accept as true the other 41 findings and conclusions.

Remediation of Reasons for Removal²

- [21] Mother challenges the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside Mother’s home will not be remedied.
- [22] In reviewing the trial court’s findings regarding whether Mother has or will remedy the conditions resulting in the Children’s removal from Mother or the reasons the Children were placed outside Mother’s home, we first “identify the conditions that led to removal” and then “determine whether there is a reasonable probability that those conditions will not be remedied.” *Matter of J.S.*, 133 N.E.3d 707, 715 (Ind. Ct. App. 2019) (citing *In re E.M.*, 4 N.E.3d at 643).
- [23] In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. The trial court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct. The trial court has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. Requiring trial courts to give due regard to changed conditions does not preclude them from finding that

² Mother’s brief on this issue simply quotes the findings and conclusions she disputes and then points to evidence she believes to be in her favor. This does not satisfy the cogent argument requirement of Indiana Appellate Rule 46(A)(8)(a). Nevertheless, we will address the merits of her claim.

parents' past behavior is the best predictor of their future behavior.

Matter of J.S., 133 N.E.3d at 715 (internal quotation marks and citations omitted) (quoting and citing *In re E.M.*, 4 N.E.3d at 643).

[24] It is undisputed that the Children “were removed from Mother due to allegations of domestic violence, allegations of physical abuse of G.V., and allegations of Mother’s substance abuse.”³ Appellant’s App. Vol. II at 154. The following is also undisputed:

(A) It was established by clear and convincing evidence that he allegations of the petition are true in that:

6. This was not Mother’s first interaction with the DCS, as there were prior interactions with the Georgia DCS when Mother lived in Georgia with the children.

* * *

³ Mother challenges Finding (B)(1) which states:

The basis for removal was due to domestic violence, substance abuse, and physical abuse, and Mother’s lack of insight and willingness to not only acknowledge the issues that have plagued this family for many years, but the gravity of her role in the reasons for removal will not allow for this family to move towards reunification.

Appellant’s App. Vol. II at 156. In her brief, Mother’s challenge to this finding focuses on the latter part thereof regarding her alleged lack of insight and acknowledgement of her and her family’s issues.

Notably, Mother does not challenge Finding (A)(2) which states: “The children were removed from Mother due to allegations of domestic violence, allegations of physical abuse of G.V, and allegations of Mother’s substance abuse.” Appellant’s App. Vol. II at 154. Thus, to the extent Mother challenges Finding (B)(1), her challenge is to only the latter part of that finding and not to the reasons for removal of the Children from her care.

12. Mother was very guarded throughout many of the services provided, and she refused to accept responsibility for any of her actions or the reasons that led up to the children being removed from her care.

13. Dr. Anthony Berardi noted that Mother “portrayed herself as overly virtuous in order to make a highly favorable impression,” and that her “lack of transparency and forthrightness was apparent throughout the testing.”

14. Notwithstanding Mother’s completion of some of the services, she failed to complete Moral Reco[n]nation Therapy as part of her treatment plan.

15. Mother specifically requested that she obtain her own therapist, which was allowed, but even Mother’s own therapist indicated that Mother failed to achieve treatment goals and failed to follow through with the recommended treatment plan.

16. Mother has denied all substance abuse, physical abuse, and sexual abuse of the children.

17. Family therapy that included Mother and the children was not recommended by any of the therapists charged with the treatment and rehabilitation for the children due [to] the substantial trauma inflicted upon the children by Mother.

* * *

20. G.V. will need to engage in long[-]term counseling and therapy to address his aggression and his prior trauma.

21. Mother was more of a barrier to G.V.'s rehabilitation by consistently failing to share information to assist in G.V.'s treatment and care.

* * *

31. Mother currently has little to no bond with the children, and the children do not want to see their mother.

(B) There is a reasonable probability that the conditions that resulted in the children's removal will not be remedied.

* * *

2. While Mother has completed Anger Management and Substance abuse [programs], several therapists have testified that Mother has yet to address the reasons for removal, and Mother continues to divert responsibility to other family members for the reasons for removal.

3. Mother has not completed all services recommended to remedy the reasons for removal.

* * *

(C) A continuation of [the] parent[-]child relationship poses a threat to the well-being of the children.

* * *

3. Mother made little progress throughout the two and a half (2 ½) years the children have been removed from her care . . .

.

* * *

5. Mother presents a historical inability to provide for the children and a current inability. . . .

Id. at 155–57.

- [25] Mother argues that the Court’s finding that she has not engaged in family therapy to address the issues between herself and the Children “is correct if read independently” but “should not have led the court to conclude that the probability of the conditions leading to removal would not be remedied.” Appellant’s Br. 27. However, the trial court’s undisputed findings show that Mother consistently denied the allegations of physical abuse and substance abuse and that Mother consistently refused to meaningfully engage with service providers to address the Children’s feelings about that alleged abuse.
- [26] Based on these undisputed findings, the trial court did not clearly err by concluding that there was a reasonable probability that the conditions that resulted in the Children’s removal from Mother’s care, or the reasons for their continued placement outside Mother’s home, would not be remedied.⁴

⁴ Mother also argues that the trial court erred by concluding that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to each of the Children’s well-being. *See* I.C. § 31-35-2-4(b)(2)(B)(ii). The trial court was required to find only that one prong of Indiana Code section 31-35-2-4(b)(2)(B) has been established. *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. Because we have concluded that DCS proved that there was a reasonable probability that the conditions which resulted in the Children’s removal from Mother’s care would not be remedied, we need not address her argument directed at the “threat” prong of Section 4(b)(2)(B). *See id.*

Best Interests of the Children

- [27] Mother also challenges the trial court’s conclusion that termination of her parental rights over the Children is in their best interests. To determine the best interests of a child, a trial court looks at the totality of the evidence and subordinates the interests of the parents to those of the child. *In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022) (citing *In re A.B.*, 887 N.E.2d 158, 167–68 (Ind. Ct. App. 2008)), *reh’g denied* (Jan. 25, 2023), *trans. denied sub nom. A.B. v. Indiana Dep’t of Child Servs.*, 209 N.E.3d 1168 (Ind. 2023). A central consideration in this determination is the child’s need for permanency. *Id.* (citing *In re K.T.K.*, 989 N.E.2d at 1235).
- [28] The trial court also considers whether a child’s emotional and physical development is threatened by the parent-child relationship. *In re P.B.*, 199 N.E.3d at 799 (citing *In re K.T.K.*, 989 N.E.2d at 1235). Permanent impairment of physical, mental, or social development is not necessary before a trial court may terminate the parent-child relationship. *Id.* (citing *In re K.T.K.*, 989 N.E.2d at 1235).
- [29] To prove by clear and convincing evidence that termination is in the Children’s best interests, it is sufficient for DCS to show that (1) both the case manager and

Similarly, Mother challenges the conclusions the trial court drew from four findings regarding her diagnosed mental disorders and her participation in therapeutic services. Mother fails to present any cogent argument as to why the trial court’s conclusions based on those four findings were clearly erroneous, in violation of Indiana Appellate Rule 46(A)(8)(a). Even if those four findings did not support the trial court’s conclusions and ultimate termination decision, the 41 undisputed findings and conclusions do support that decision.

child advocate recommend terminating Mother’s parental rights and (2) the conditions resulting in the Children’s removal from Mother’s care will not be remedied. *See In re P.B.*, 199 N.E.3d at 799 (citing *L.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*).

[30] Here, it is undisputed that both the case manager and child advocate believe that termination would be in the Children’s best interest. As discussed above, the trial court’s conclusion that the conditions resulting in the Children’s removal will not be remedied is not clearly erroneous. Thus, the trial court’s conclusion that termination was in the Children’s best interest was not clearly erroneous.

Satisfactory Plan

[31] This Court has previously determined that “adoption is a ‘satisfactory plan’ for the care and treatment of a child.” *In re B.M.*, 913 N.E.2d 1283 (Ind. Ct. App. 2009) (citing *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997)). Mother argues that adoption of the Children is an unsatisfactory plan here because the Children have been placed with grandparents whose age may someday limit their abilities to care for the Children.

[32] Mother’s argument assumes that the plan the trial court approved is for the grandparents to adopt the Children. The trial court made no such finding, conclusion, or order. Furthermore, the appropriateness of a particular adoptive placement is within the purview of the adoption court, not the termination court. *See In re C.D.*, 141 N.E.3d 845, 856 (Ind. Ct. App. 2020) (citing *In re A.S.*,

17 N.E.3d 994, 1007 (Ind. Ct. App. 2014), *trans. denied*), *trans. denied*. Since Mother's only challenge to the plan for the care and treatment of the Children is outside of the trial court's authority, we cannot say that the trial court's conclusion that DCS has a satisfactory plan for the Children is clearly erroneous.

Conclusion

[33] In sum, the trial court's undisputed findings and conclusions demonstrate that Mother has not shown that she has or is willing to address, let alone remedy, the reasons for the Children's removal from her care. DCS and CASA testified that termination of Mother's parental rights is in the Children's best interest. DCS also presented a satisfactory plan of adoption for the Children. We, therefore, hold that the trial court did not err when it terminated Mother's parental rights.

[34] Affirmed.

Crone, J., and Brown, J., concur.