

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In re: the Termination of the Parent-Child Relationship of:
My.B. and L.B. (Minor Children)

and

M.B. (Mother),
Appellant-Respondent

v.

Indiana Department of Child Services,
Co-Appellee-Petitioner,

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



April 3, 2024

Court of Appeals Case No.
23A-JT-2124

Appeal from the Marion Superior Court
The Honorable Alicia Gooden, Judge

The Honorable Marcia J. Harper, Magistrate

Trial Court Cause No.

49D14-2201-JT-614

49D14-2201-JT-616

Memorandum Decision by Judge May

Judges Vaidik and Kenworthy concur.

May, Judge.

[1] M.B. (“Mother”) appeals the involuntary termination of her parental rights to My.B. and L.B. (collectively, “Children”). She presents two arguments for our review, which we restate as:

1. Whether the trial court’s findings support its conclusions that the conditions under which Children were removed from Mother’s care would not be remedied or that the continuation of the Mother-Children relationship posed a threat to Children’s well-being; and

2. Whether the trial court’s findings support its conclusion that termination of Mother’s parental rights was in Children’s best interests.

We affirm.

Facts and Procedural History

[2] Mother is the biological mother¹ of My.B., born May 26, 2014, and L.B., born December 10, 2019. On June 3, 2020, police responded to a domestic violence incident involving Mother and her boyfriend, L.W. L.W. left the scene before police arrived. Police called the Department of Child Services (“DCS”) because Mother was unable to care for Children after the domestic violence incident. Family Case Manager (“FCM”) Tracy Pizano and FCM Archey² arrived on the scene. Mother told FCM Archey that she had been drinking alcohol, smoking marijuana, and using ecstasy. Mother stated she and L.W. verbally argued and then engaged in a physical altercation. During the altercation, Mother was holding L.B. and My.B. was nearby. Mother reported that “with all of the back and forth passing of [L.B.,] her diaper ripped” and fell off. (Ex. Vol. II at 47.) DCS removed Children from Mother’s care because Mother could not “provide a safe, drug free home and the father’s [sic] to [Children] could not be found.” (*Id.* at 43.) Children were placed with their maternal great-aunt, where they have remained throughout the proceedings.

¹ Mother alleged L.W. was My.B.’s father but paternity was not established. Mother alleged A.C. was L.B.’s father but again paternity was not established. As to My.B., L.W. participated at the beginning of the Child in Need of Services (“CHINS”) proceedings and waived the fact-finding hearing. Based thereon, My.B. was declared a CHINS as to L.W. A.C. was not involved in the CHINS proceeding and the trial court entered a default judgment in which it declared L.B. was a CHINS. L.W. and A.C. did not participate in services. L.W. and A.C. were named parties in the termination of parental rights case of their respective child but did not appear or request counsel. The order before us indicates, “[a] default hearing was held as to [L.W. and A.C.] and a separate order [sic] entered as to their rights.” (App Vol. II at 44.) Neither participates in this appeal.

² FCM Archey’s first name is not in the record.

[3] On June 4, 2020, DCS filed a petition alleging Children were Children in Need of Services as to Mother. On October 14, 2020, DCS and Mother filed an agreed entry wherein Mother admitted Children were CHINS “because Mother need[ed] the assistance of DCS to obtain and maintain sobriety and a home free of domestic violence.” (App. Vol. II at 45.) On October 19, 2020, the trial court held a fact-finding hearing on the CHINS petition and noted Mother’s admission. Based thereon the trial court adjudicated Children as CHINS. On the same day, the trial court held a dispositional hearing and entered its parental participation order as to Mother. The order required Mother to, among other things, participate in homebased therapy and homebased case management, complete substance abuse and domestic violence assessments and follow all recommendations, submit to random drug screens, and attend supervised visitation with Children.

[4] At the time of the fact-finding and dispositional hearings on October 19, 2020, Mother had completed the substance abuse and domestic violence assessments but had not attended the recommended treatments. In November 2020, Mother was sentenced to probation for Class A misdemeanor operating a vehicle while intoxicated endangering a person,³ which Mother had committed in January 2020 prior to DCS’s involvement. On June 30, 2021, the trial court held a permanency hearing and entered an order in which the trial court noted Mother

³ Ind. Code § 9-30-5-1(a)-(b).

had not made “meaningful or sustainable progress toward reunification.” (Ex. Vol. II at 107.)

[5] In September 2021, DCS referred Mother for another substance abuse assessment. Mother completed that assessment. During the assessment, Mother told the person who completed the assessment, Cruz Ochoa, that she had used ecstasy and alcohol in the past but did not report use of other substances. Mother also reported that she did not have any mental health issues. Ochoa recommended Mother complete intensive outpatient substance abuse treatment. Mother did not complete that treatment.

[6] In December 2021, Mother completed a mental health assessment with Sherry Butler. Mother told Butler that she was unhoused at the time. Mother reported she had been diagnosed with bipolar disorder and depression but was not receiving treatment or medication for those disorders. Mother also reported she used alcohol daily. Mother did not tell Butler that she used marijuana, but Butler noted, “[a] review of [Mother’s] medical record indicates cannabis use, severe from Eskenazi notes. [Mother] reports criticism by others, morning [marijuana] use, legal problems, missed work, [and] arguments and fights[.]” (*Id.* at 188.) Butler recommended Mother participate in therapeutic services and undergo a medication assessment, a psychological evaluation, and a substance abuse assessment. Butler also recommended Mother continue to engage with her home-based case worker to assist her with employment, housing, and parenting skills.

- [7] On January 12, 2022, the trial court held a permanency hearing. In that hearing, DCS “asserted that [Mother] had failed to cooperate with services, had been unsuccessfully discharged by several providers, and did not engage in consistent parenting time.” (App. Vol. II at 46.) Mother had not visited with L.B. since 2021, and Mother’s visits with My.B. were “far and few between.” (Tr. Vol. II at 180.) Based thereon, the trial court changed Children’s permanency plan to adoption. On January 25, 2022, DCS filed a petition to terminate Mother’s parental rights to Children.
- [8] On January 27, 2022, home-based therapist Debra Taylor received a referral to provide services to Mother. On February 23, 2022, Mother attended an intake assessment with Taylor and told Taylor “she had never had a history of substance abuse or alcoholism or domestic violence[.]” (*Id.* at 28.) Mother left the intake assessment early because she had a family emergency. Mother did not complete the assessment despite multiple calls from Taylor to reschedule.
- [9] On February 4, 2022, therapist Monica Quarles, another homebased case manager, received a referral to provide services for Mother. Quarles attempted to contact Mother on multiple occasions and Mother did not respond. Mother eventually made multiple appointments with Quarles but missed all of those appointments. Quarles closed the referral due to noncompliance on March 10, 2022.
- [10] On April 25, 2022, Mother completed an intake assessment with therapist Kayla Collingwood. Mother was to work with Collingwood on “substance

abuse and PTSD[.]” (*Id.* at 48.) Collingwood scheduled Mother for individual and group therapy. Individual therapy was scheduled for every other week and group therapy was scheduled for every week. Mother attended one individual therapy session and two group therapy sessions in the three months between the intake and July 21, 2022. Mother did not engage in services after July 2022.

[11] On September 7, 2022, Mother completed an intake assessment for substance abuse treatment with Jennifer Kincaid-Shores. Mother told Kincaid-Shores she had a history of opiate and alcohol abuse. She also told Kincaid-Shores that she had been diagnosed with generalized anxiety disorder and major depression disorder. Kincaid-Shores recommended Mother attend individual and group therapy, and she put Mother on methadone treatment based on Mother’s reported opiate use. Mother showed up to the methadone facility “every day except for two[.]” but she completed only half of her required individual therapy hours and did not regularly attend group therapy. (*Id.* at 33.) She also used marijuana while in the program.

[12] In September 2022, Mother violated her probation in the driving while intoxicated case. The criminal court sentenced her to 120 days of home detention. In December 2022, Mother started working with Rinkoo Sidhu, a psychiatric mental health nurse practitioner, to address mental health medication management. Sidhu met with Mother twice - once in December 2022 and once in January 2023 - and prescribed Mother medication for Mother’s diagnoses of depression and anxiety. Sidhu did not see Mother after January 2023.

[13] The trial court held fact-finding hearings on DCS’s petition to terminate Mother’s parental rights to Children on December 6, 2022, January 19, 2023, and March 20, 2023. During those hearings, service providers reported Mother completed two drug screens during the pendency of the proceedings. Additionally, while Mother completed multiple assessments for different types of required services, she did not complete any of the recommended services. Service providers and Mother reported instability in Mother’s housing situation - Mother sometimes lived at Motel 6 and other times in an apartment. Additionally, Mother had numerous jobs and periods of unemployment. Based on the testimony and evidence before it, the trial court issued an order terminating Mother’s parental rights to Children on August 23, 2023.

Discussion and Decision

[14] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re A.L.*, 223 N.E.3d 1126, 1137 (Ind. Ct. App. 2023). However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* The termination of parental rights is appropriate when parents are “unable or unwilling to meet their parental responsibilities[.]” *Id.* (quoting *Bester v. Lake Cnty. Ofc. of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). The termination of the 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. Ofc. of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[15] To terminate a parent-child relationship in Indiana, DCS must allege and 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.
 - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
 - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department 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 child in need of services or a delinquent child;
- (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). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *In re Q.M.*, 974 N.E.2d 1021, 1024 (Ind. Ct. App. 2012) (quoting *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994)).

[16] When reviewing a trial court’s termination of parental rights,

“we do not reweigh the evidence or judge witness credibility.” We consider only the evidence and reasonable inferences that are most favorable to the judgment and give “due regard” to the trial court’s unique opportunity to judge the credibility of the witnesses. “We will set aside the trial court’s judgment only if it is clearly erroneous.”

In re V.A., 51 N.E.3d 1140, 1143 (Ind. 2016) (internal citations omitted).

[17] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). First, we must determine whether the evidence supports the findings and then whether the findings support the trial court’s judgment. *Id.* A finding is clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support it. *Steele-Giri v. Steele*, 51 N.E.3d 119, 125 (Ind. 2016). Mother does not challenge any of the trial court’s

findings, and “[w]e accept unchallenged findings as true.” *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019).

1. Remedy of Conditions

[18] Mother argues the trial court’s findings do not support its conclusion that there existed a reasonable probability that the conditions under which Children were removed from her care would not be remedied. When considering whether the conditions under which a child is removed from a parent’s care would be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 642-3 (Ind. 2014). First, we identify the reasons for the child’s removal and then we determine whether there is a reasonable probability those conditions will be remedied. *Id.* at 643. As we recently stated in *In re A.L.*:

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.” In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. The trial court may also consider a parent’s failure to respond to services. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.”

223 N.E.3d 1126, 1138-9 (Ind. Ct. App. 2023) (internal citations omitted).

[19] Children were removed from Mother's care due to domestic violence and substance abuse in the home. The trial court found, regarding whether those conditions had been remedied:

20. Mother failed to engage in homebased therapy despite multiple referrals with different providers.

21. Mother did not respond to repeated requests by service providers to meet and on one occasion left in the middle of an intake session which she never rescheduled despite repeated follow-up communication from the provider.

22. Mother failed to substantially complete homebased casework. She did not respond to provider requests to meet, missed appointments, and was closed out for noncompliance.

23. Mother was noncompliant with random drug screens. She completed two (2) drug screens from the time DCS Family Case Manager Alice Wyatt obtained the case prior to the dispositional hearing to [early] 2022.

24. Although Mother completed a substance abuse assessment, she failed to participate in the substance abuse treatment recommended by the assessment.

25. Mother attended services through Adult and Child, where she completed an intake in April of 2022 and attended two (2) group sessions and one (1) individual session from June 30, 2022 through July 21, 2022. She failed to attend the other sessions. These services were to address PTSD and substance abuse. Mother failed to engage even after the provider contacted her in fall of 2022 through an engagement specialist.

26. Although Mother did not include opiate use in the information she provided for her substance abuse assessment, Mother obtained methadone treatment beginning in fall of 2022 through New Vista. While Mother did obtain the methadone consistently, she failed to comply with the other requirements of the program and was put on behavior contract in late October of 2022. Specifically, she attended approximately half of her required individual counseling sessions, less than half of the required group sessions, and half of the required cannabis use groups she was required to attend as result of ongoing cannabis usage while in treatment. After implementation of the behavior contract Mother continued to fail to attend required sessions.

27. Mother changed opiate treatment programs three (3) times in the four-month period from December, 2022 through March, 2023.

28. Mother gave conflicting statements regarding her mental health history and treatment to both providers and the Court, but may have diagnoses including bipolar disorder, generalized anxiety disorder, depression, Post Traumatic Stress Disorder, and opiate abuse disorder, in addition to her history of addiction to alcohol and marijuana and childhood diagnosis of ADHD.

29. Mother displayed impulsive and inappropriate behavior throughout the trial, including repeated interrupting [sic] which required admonishment by the Court.

30. Mother asserted she had seen “Dr. Rinkoo” for medication management and counseling from August, 2022 to January 2023, but Nurse Practitioner Rinkoo’s testimony was that she had attended two appointments in December of 2022 and January of 2023 and no counseling was provided as part of those appointments.

31. Mother completed the domestic violence assessment but failed to complete the services recommended by the assessment.

32. Mother gave inconsistent statements regarding her residence history[] that together show that Mother experienced housing instability throughout the underlying CHINS case, including living in hotels from time to time, having nowhere else to live.

33. Mother had lived in three different places in the five months preceding the final date of the trial, including [a] hotel, staying with someone whose last name she did not recall, and her current residence.

34. Mother testified that she had worked for Agape home care for “a few years”, but the Court finds that statement to not be credible in light of DCS Family Case Manager Wyatt’s testimony that she had numerous jobs and periods of unemployment throughout the underlying CHINS case.

35. Mother has criminal history including Operating While Intoxicated from 2020.

(App. Vol. II at 46-8.) Additionally, the trial court noted L.B. had been diagnosed with autism and

Mother has not demonstrated she can meet the following needs identified by Dr. Amaurita Kanai with regard to a home environment for a child with autism spectrum disorder. Specifically, [L.B.’s] need for a home environment that is structured, stable, consistent, and predictable, and for a patient and flexible caregiver.

(*Id.* at 48.) In summary, the trial court found:

The Children were removed from their Parents' care due to [Children] being present during a physical altercation between [Mother] and her paramour. [Mother] was under the influence of drugs and alcohol and, subsequently, [Children] were left without a sober caregiver.

a. [Mother] was ordered to complete Substance Abuse Assessment, Home-Based Therapy, Home-Based Case Management, Random Drug Screens, and Domestic Violence Services.

b. [Mother] has failed to successfully complete even one of these services even though she's had approximately two and a half years to do so.

c. Furthermore, [Mother] was inconsistent in attending supervised parenting time with [Children] throughout the life of the case[.]

(*Id.* at 49.) Based thereon, the trial court concluded the conditions under which Children were removed from Mother's care would not be remedied.

[20] Mother contends the trial court's findings do not support its conclusion that the conditions under which Children were removed from Mother's care would not be remedied. She asserts she had secured employment, housing, treatment, and medication at the time of the fact-finding hearing. She acknowledges she had not completed required therapy "but they were underway." (Br. of Appellant at 22.)

[21] However, the trial court found Mother had not secured housing and instead was sometimes living in a hotel and sometimes being unhoused. Further, while

Mother was given medication for her mental health conditions during her appointments with Sidhu, those appointments were more than two months before the final fact-finding hearing and there was no indication Mother continued to take the medication. Finally, Mother acknowledged she had not completed the treatments required for reunification. Based thereon, we conclude the trial court's findings support its conclusion that the conditions under which Children were removed from Mother's care would not be remedied.⁴ *See, e.g., In re C.S.*, 190 N.E.3d 434, 439 (Ind. Ct. App. 2022) (mother's continued drug use, pending criminal charges, and inability to demonstrate she could care for her child supported the trial court's conclusion that the conditions under which child was removed from her care would not be remedied), *trans. denied*.

2. Best Interests

[22] Mother contends that, while she has not completed services, “there was no evidence any of [Children’s] needs could not be met if Mother’s rights were not terminated. There was no evidence that allowing Mother more time to complete services and reunify with [Children] was contrary to [Children’s] best interest.” (Mother’s Br. at 24.) When considering whether termination of a

⁴ Mother also argues the trial court's findings do not support its conclusion that the continuation of the Mother-Children relationship poses a threat to Children's well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code section 31-35-2-4(b)(2)(B). *See, e.g., In re J.S.*, 183 N.E.3d 362, 369 (Ind. Ct. App. 2022) (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and, thus, DCS need prove only one of the enumerated elements therein), *trans. denied*. Accordingly, we need not address this argument to affirm the trial court's judgment.

parent’s rights is in children’s best interests, the trial court is “required to look at the totality of the evidence.” *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. When it does so, the trial court “must subordinate the interests of the parents to those of the children involved.” *Id.* The trial court “need not wait until a child is irreversibly harmed” before terminating the parent-child relationship. *Id.* Additionally, testimony from service providers may support a finding that termination is in a child’s best interests. *Id.*

[23] The trial court’s findings regarding whether termination of Mother’s parental rights to Children were in Children’s best interests are mostly the same as those in the previous section. Additionally, the trial court noted Children were doing well in placement with their maternal great-aunt. Finally, the trial court found Mother was unable to support L.B.’s special needs. Based thereon, we conclude the trial court’s findings supported its conclusion that termination of Mother’s parental rights was in Children’s best interests. *See Matter of G.M.*, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017) (termination in the child’s best interests because the mother had not progressed in services and continued to be unable to care for the child).

Conclusion

[24] The trial court’s findings supported its conclusions that the conditions under which Children were removed from Mother’s home would not be remedied and

that termination of Mother’s parental rights was in Children’s best interests.

Accordingly, we affirm.

[25] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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