

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of:

P.O. and I.O. (Minor Children),

J.B. (Mother)

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



April 12, 2024

Court of Appeals Case No.
23A-JT-2787

Appeal from the Allen Superior Court

The Honorable Sherry A. Hartzler, Magistrate
The Honorable Lori K. Morgan, Judge

Trial Court Cause Nos.
02D08-2301-JT-20
02D08-2301-JT-21

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] J.B. (“Mother”) appeals the trial court’s termination of her parental rights over her minor children, P.O. and I.O. (“Children”).¹ Mother raises two issues for our review, namely:

1. Whether the trial court clearly erred when it concluded that the conditions that resulted in the Children’s removal from Mother’s care will not be remedied.

2. Whether the trial court clearly erred when it concluded that the termination of the parent-child relationships is in the Children’s best interests.

[2] We affirm.

Facts and Procedural History

[3] In January 2021, the Indiana Department of Child Services (“DCS”) initiated child-in-need-of-services (“CHINS”) proceedings against Mother. DCS alleged the Children to be CHINS based on Mother’s use of methamphetamine and exposure of the Children to her drug use and her housing instability. At an

¹ The Children’s father does not participate in this appeal.

ensuing fact-finding hearing, the court found that the Children had been removed from Mother’s care while she had been staying in a hotel room in Allen County. Mother did not have a permanent residence. The hotel room was “unkempt” and “in disarray,” and there was methamphetamine and paraphernalia in the room. Appellant’s App. Vol. 2, p. 22. Mother admitted that she had been using methamphetamine “with other individuals” in the room. *Id.* The court found that “a registered sex offender was also residing in the room.” *Id.* The court adjudicated the Children to be CHINS and ordered Mother to participate in various services.

[4] By June 2021, Mother had tested positive for methamphetamine three times. In November, the court found that Mother had not participated in drug screens, had failed other drug screens, had not refrained from criminal activity, had been inconsistent with and then later discharged from visitation services, and had not secured a required psychiatric evaluation. Throughout 2022, Mother continued to miss or fail drug screens, continued to struggle to obtain stable housing, and continued to not benefit from services.

[5] In March 2023, DCS filed its petition to terminate Mother’s parental rights over the Children. In May, Mother again tested positive for methamphetamine. The court then held an evidentiary hearing on DCS’s petition, after which the court found Mother had not “obtained sobriety such to have remedied the reason for the removal and continued placement of the [C]hildren outside of her care.” *Id.* at 26. The court further found:

At the time of the termination proceedings, [Mother] had been residing in a camper on a seasonal lot in a campground for the last three months. The Court finds that despite [DCS's] attempt to investigate Mother's housing at the campground and arranging visits with Mother in advance, Mother failed to cooperate on three different occasions when the case manager went to the campground. Prior to residing in the camper, [Mother] was living [in] a motel and previously in her boyfriend's residence[,] which was a one-bedroom apartment. The Court finds that [Mother] has not obtained housing stability by the time of the termination proceedings. . . . The Court finds . . . that Mother was minimally receptive, often combative with case managers, and failed to notify [DCS] when she moved to the campground.

Id. at 26-27.

[6] The court concluded that the conditions that resulted in the Children's removal from Mother's care would not be remedied and that termination of the parent-child relationships was in the Children's best interests. This appeal ensued.

Standard of Review

[7] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[8] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *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; 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.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[9] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2023). We need only discuss two of those elements raised by Mother in this appeal: (1) whether 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 (2) whether termination of Mother’s parental rights is in the Children’s best interests. *I.C.* § 31-35-2-4(b)(2)(B)(i) and (C).

[10] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child’s very survival. *Bester*, 839 N.E.2d at

148. It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

1. The trial court did not err when it concluded that the conditions that resulted in the Children's removal from Mother's care will not be remedied.

[11] Mother contends that DCS failed to prove that there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside of her home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[12] Here, the Children were removed from Mother's care due to Mother's drug use and her lack of stable housing. Throughout the ensuing CHINS and

termination proceedings, Mother repeatedly missed or failed drug screens, including a failed test for methamphetamine after DCS had filed its termination petition. Mother did not complete mental-health services to assist with her substance abuse. She never obtained a permanent address, and she lived with acquaintances or in a motel before moving into a camper on a temporary lot, which location she did not initially disclose to DCS and which she refused to allow DCS to inspect. The trial court acted within its discretion when it concluded from this evidence that the conditions that resulted in the Children's removal from Mother's care will not be remedied.

[13] Still, Mother argues that she did complete some services and was participating in others. She contends that the drug-screening program was onerous and her work schedule left her exhausted. Mother also relies on her own testimony to assert that she had lived in the camper for three months prior to the termination hearing and that the camper was suitably livable.

[14] But Mother's arguments on appeal simply seek to have this Court reweigh the evidence and disregard the trial court's role as the fact-finder, which we will not do. The trial court's conclusion that the conditions that resulted in the Children's removal from Mother's care will not be remedied is supported by the record, and we affirm its conclusion.

2. The trial court did not err when it concluded that termination of the parent-child relationships is in the Children’s best interests.

[15] Mother next contends that DCS failed to prove that termination of her relationships with the Children is in the Children’s best interests. In determining what is in a child’s best interests, a 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.*

[16] 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.*

[17] Here, Family Case Manager Erin Fallat testified that she recommended the Children be adopted due to Mother’s lack of “any substantial progress” in the underlying concerns that resulted in the Children’s removal. Tr. Vol. 2, p. 114.

Similarly, the court-appointed special advocate testified that termination of the parent-child relationships was in the Children’s best interests. *Id.* at 151. And, as explained above, the trial court’s conclusion—that the conditions that resulted in the Children’s removal from Mother’s care will not be remedied—is supported by the record.

[18] Mother’s arguments to the contrary on appeal again simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s conclusion that termination of Mother’s parental rights over the Children is in the Children’s best interests is supported by the record, and we affirm its conclusion.

Conclusion

[19] For all of these reasons, we affirm the trial court’s termination of Mother’s parental rights over the Children.

[20] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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