

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re the Termination of the
Parent-Child Relationship of:
R.G. and M.K. (Minor Children),
and
S.K. (Mother),
Appellant-Respondent,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

May 21, 2021

Court of Appeals Case No.
20A-JT-2026

Appeal from the Bartholomew
Circuit Court

The Honorable Lindsey Holden-
Kay, Magistrate

Trial Court Cause Nos.
03C01-1911-JT-6756
03C01-1911-JT-6757

Weissmann, Judge.

[1] After S.K. (Mother) ignored her referral for drug treatment and missed so many visits with her children that they were canceled altogether, the trial court granted the Indiana Department of Child Services' petitions to terminate her parental rights. Mother now appeals, arguing that the trial court's decision relied on speculation, not fact. But it is Mother who relies on what-ifs. Accordingly, we affirm the trial court's orders.

Facts

[2] R.G., 11, and M.K., 6, (Children) had been living with a neighbor for about six months when Mother decided it was time for them to come home. Children resisted, and police responded to the ensuing disturbance. Children told responding officers about their Mother's methamphetamine problem, which Mother admitted. Children also told police they were afraid of Mother and did not want to return to her care. Children were immediately removed and declared children in need of services (CHINS).

[3] Over the next three years, Children were never returned to Mother's care, and Mother failed to comply with the trial court's dispositional order. Mother did not get the addiction treatment that was offered to her, she did not engage in home-based case management, and she canceled 26 of 53 visitations with Children. The visits she did attend were "chaotic." R.G. Tr. Vol. II p. 26. Mother's attendance was so inconsistent the Indiana Department of Child Services (DCS) stopped visitation altogether.

[4] The trial court terminated the parent-child relationship between Mother and Children, now 15 and 9, at two separate proceedings.¹ Mother failed to appear at either one. She now launches this consolidated appeal.

Standard of Review

[5] Parents' interest in the care, custody, and control of their children is constitutionally protected but not absolute. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). The State may terminate parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008).

[6] A petition to terminate parental rights must allege, in relevant part:

(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;

¹ Because there were two different proceedings, there are two sets of transcripts and two sets of exhibits. To minimize confusion, we have appended the initials of the child to whom the proceeding pertained to the beginning of citations to these documents.

- (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 trial court finds these allegations are true by clear and convincing evidence, it shall terminate the parent-child relationship.

Ind. Code § 31-35-2-8; Ind. Code § 31-37-14-2.

In reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (citing *In re I.A.*, 934 N.E.2d at 1132). The judgment will be set aside only if it is clearly erroneous. *Id.* We apply a two-tiered standard of review: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.*

Discussion and Decision

- [7] Mother argues that the Indiana Department of Child Services failed to prove by clear and convincing evidence that there was a reasonable probability the conditions resulting in removal would not be remedied, that her continued relationship with Children posed a threat to their well-being, and that termination was in Children's best interest.

I. Remediating of Conditions & Threat to Children

- [8] Mother argues that DCS failed to present sufficient evidence that the conditions leading to removal would not be remedied or that a continued relationship with

her posed a threat to Children. She asserts that DCS merely relied on speculation. DCS must prove at least one of these allegations for termination to be proper. *See* I.C. § 31-35-2-4(b)(2).

[9] We engage in a two-step analysis to determine whether the conditions leading to removal will be remedied. *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015) (citing *In Re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014)). First, we identify the conditions that led to removal. Second, we determine whether there is a reasonable probability those conditions will not be remedied by adjudging the parent’s fitness at the time of the termination hearing. *Id.* In evaluating the second step, we balance habitual patterns—like drug abuse, failure to provide support, and lack of adequate housing or employment—against changed conditions. *Id.* Our determination must be based on the record, not speculation. *A.A. v. Ind. Dep’t of Child Servs.*, 51 N.E.3d 1140, 1146 (Ind. 2016).

[10] The trial court found that both Children were initially removed from Mother due to concerns about Mother’s methamphetamine abuse. App. Vol. II, pp. 33, 40. In making this determination, the trial court relied on the CHINS petitions for Children, which indicated Children had been staying with an adult male for several months and refused to return home with Mother because they were afraid of her. R.G. Ex. 1, p. 6; M.K. Ex. 1, pp. 5-6. Mother also admitted to methamphetamine use. R.G. Ex. 1, p. 7; M.K. Ex 1, p. 7.

[11] The trial court also found that, since Children’s removal, Mother has failed to engage in DCS services to ameliorate her addiction issues, as she refused to

participate in recommended treatment or submit to drug screens. App. Vol. II, pp. 33-34, 40-41. When Mother did submit to drug testing, the results were positive for methamphetamine. *Id.* at 34, 41. The trial court concluded:

The conditions that resulted in the child's removal . . . will not be remedied in that . . . Mother has admitted that using methamphetamine is the reason why her children are unsafe with her. She has not made any progress towards alleviating the concerns related to her substance use.

Id. at 31, 38.

[12] Despite these findings, Mother argues that her inconsistent communication with DCS is actually evidence that DCS cannot know whether she has made any progress on her addiction issues. But “a pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Mother fails to point to any evidence of changed circumstances to weigh against her habitual drug use. It is Mother's argument, not DCS's, that is speculative. The trial court properly found that there was a reasonable probability that the conditions resulting in removal would not be remedied.

[13] There is also sufficient evidence to support the court's finding that a continued relationship with Mother is a threat to Children's well-being. In reaching this conclusion, the trial court ruled:

The continuation of the parent-child relationship poses a threat to the well-being of the child in that [Mother] has not addressed her substance use and has not made progress towards reunification. Her visits, when they occur, were [sic] chaotic and full of anger from the children towards Mother. Mother's lack of progress has significantly impacted her bond with the Child. . . .

- [14] App. Vol. II, pp. 31, 38. Mother disputes this ruling, again attempting to leverage her own noncompliance to argue the threat analysis is speculative because she has not seen her own Children since December 2018.
- [15] Again, it is Mother's argument that is speculative. R.G. testified, "I wouldn't ever feel safe being in her care anymore. I don't want to be in her care anymore. Just never would ever feel safe with her anymore." R.G. Tr. Vol. II, p. 45. Rhonda Caudill, the Family Case Manager from DCS, testified that M.K. was "traumatized" by Mother's behavior and that failing to terminate the parent-child relationship would harm M.K. because "she would still be waiting for permanency, and for her forever home, and she wants to stay where she is at." M.K. Tr. Vol. II, pp. 13, 17. This testimony, along with Mother's inability to engage with services to address her addiction, is sufficient to support the court's finding that a continued relationship with Mother poses a threat to Children.

II. Best Interests of the Child

- [16] Mother also argues that DCS presented no specific evidence showing that termination was in Children's best interests. A determination of best interests should be based on the totality of circumstances. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007). A parent's past and current

inability to provide a suitable environment for their children supports a finding that termination is in the children's best interests. *Id.* Permanency is a central consideration in this determination. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1235 (Ind. 2013).

[17] In addition to Mother's addiction and visitation issues and the stress she causes Children, the trial court found that termination was in Children's best interests because both children were thriving in their placement. R.G. "expressed his desire to be adopted [by their placement] and his desire to no longer have contact with Mother." App. Vol. II, p. 31. Likewise, M.K. "has expressed her desire to remain with [the placement]." App. Vol. II, p. 38. Mother argues this determination is premature, but Children have been waiting three years for any sense of permanency. Cumulatively, this evidence is sufficient to support a finding that termination was in Children's best interests.

[18] The judgment of the trial court is affirmed.

Kirsch, J., and Altice, J., concur.