

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
Ar.S. (Minor Child) and A.S.
(Mother) and J.D. (Father)
A.S. (Mother) and J.D. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

June 15, 2022

Court of Appeals Case No.
22A-JT-35

Appeal from the
Wayne Superior Court

The Honorable
Darrin M. Dolehanty, Judge

Trial Court Cause No.
89D03-2109-JT-30

Vaidik, Judge.

Case Summary

- [1] A.S. (“Mother”) and J.D. (“Father”) appeal the termination of their parental rights to their daughter. We affirm.

Facts and Procedural History

- [2] Mother and Father (“Parents”) are the biological parents of Ar.S. (“Child”), born in August 2019. Father was incarcerated for a methamphetamine-related conviction when Child was born. A couple of days after Child was born, the Indiana Department of Child Services (DCS) removed Child from Mother because Child tested positive for methamphetamine, amphetamine, and THC at birth. On August 19, DCS filed a petition alleging Child was a child in need of services (CHINS). Mother admitted Child was a CHINS because she had substance-abuse issues and couldn’t provide Child with a sober caregiver. Father, who was still incarcerated (but was released in October 2019), also admitted Child was a CHINS because he couldn’t care for Child. The trial court found Child was a CHINS and ordered Parents to complete a substance-abuse assessment and follow all recommended treatment programs and participate in case-management services.
- [3] In September 2021, DCS petitioned to terminate Mother’s and Father’s parental rights to Child. A fact-finding hearing was held in December. Numerous witnesses testified, including the Court Appointed Special Advocate (CASA), three DCS Family Case Managers (FCM), and several service

providers. In addition, evidence was presented that Mother had at least twenty-one positive drug screens and Father had at least fifteen, including multiple positive screens for methamphetamine and amphetamine.

[4] Mackenzie Dunckel, Child’s CASA since July 2020, testified she had attended “a handful of parenting visits” and that Parents were “absolutely incredible with [Child]”—they were “very attentive to her needs” and “laser beam focused on her during their . . . supervised visit time.” Tr. Vol. II p. 97. That said, CASA Dunckel testified that “unfortunately supervised visits are as far as we’ve been able to go” based on Parents’ “inconsistencies [with services] and continued drug use.” *Id.* CASA Dunckel said she offered Parents inpatient drug treatment “every time” she saw them, but they declined. *Id.* at 99. She noted Child had developmental delays and saw many service providers; however, Parents didn’t “seem to exactly know what services” Child was in. *Id.* at 97. She pointed out Child was twenty-seven months old and had “never not had DCS involvement.” *Id.* CASA Dunckel opined Child deserves parents who are “consistent, sober,” and “able to maintain her well-being and her safety.” *Id.*; *see also id.* at 98 (opining Child “deserves more than to have DCS involvement in her life”). CASA Dunckel continued, “[S]adly I think that I’m not entirely confident in saying that when it comes to drugs and [Child], that [Parents] would choose [Child] instead of using illicit substances.” *Id.* at 97. Finally, when asked if additional time would help Parents complete their services and conquer their drug issues, CASA Dunckel responded she didn’t think so.

- [5] Megan Studebaker was the FCM starting in August 2019. She testified that during her time on the case, Parents completed their substance-abuse assessments, Mother participated in case-management services, and Father did not. FCM Studebaker also testified Parents continued to use drugs. Because neither Mother nor Father had a “lengthy period of sobriety,” FCM Studebaker never recommended that Child be returned to them, especially since Child’s developmental delays were starting to surface during this time. *Id.* at 137.
- [6] Jamie Quire was the FCM starting in October 2020. She testified her primary concern with Mother was her substance abuse. She explained that although Mother completed a substance-abuse assessment in 2019, she didn’t “engage fully” in the recommended outpatient substance-abuse treatment and therefore didn’t make “progress in that service.” *Id.* at 157. FCM Quire also testified Mother continued to test positive for methamphetamine, which concerned her since meth “alters brain chemicals,” “decision making,” “behavior,” “physical appearance,” and “ability to care for another individual or a child.” *Id.* at 158. FCM Quire said she and others “begged” Mother to do inpatient drug treatment, but she declined. *Id.* FCM Quire also testified Mother had been ordered to complete individual therapy, but she didn’t “engage in that up until January of 2021,” “only completed a few sessions” between then and July 2021, and then stopped altogether. *Id.* at 157.
- [7] FCM Quire had similar concerns about Father’s meth use. She explained that most of Father’s services could have been completed virtually or even by phone, yet Father “couldn’t make those phone calls” or “have any kind of extended

period of sobriety.” *Id.* at 159. FCM Quire didn’t think Parents could meet Child’s special needs since they couldn’t show “any consistency” in their own services or maintain sobriety. *Id.* at 160. According to FCM Quire, she had to “hunt [Parents] down” to get them to participate in their own services. *Id.* at 162.

[8] Kathleen Langner was the FCM starting in September 2021. She testified she had concerns about Parents’ meth use and the fact they hadn’t been able “to move past the initial steps of supervised visitation.” *Id.* at 184. FCM Langner said that although Parents were “appropriate” with Child during the supervised visits, they were “not ready for unsupervised visits” given their continued substance abuse. *Id.* at 186. FCM Langner testified she had talked to Parents about attending inpatient drug treatment, but they always had excuses for why they couldn’t. FCM Langner said she drug screened Parents seven times since September 17, 2021, and although the results weren’t back yet, Parents admitted they would test positive for methamphetamine on most of the screens. *See id.* at 184-85. She also believed Parents couldn’t meet Child’s special needs since they couldn’t take care of their own needs. FCM Langner highlighted that Mother and Father had recently been found in indirect contempt in the CHINS case for not complying with the dispositional order. *See Ex.* pp. 65-66, 69. Finally, FCM Langner testified that since February 2021, Child had been with a stable foster family who accommodated her special needs and wanted to adopt her.

- [9] Katherine Shepherd was Mother’s addiction behavioral clinician from December 2019 to June 2021. According to Shepherd, Mother was “inconsistent in attendance.” Tr. Vol. II p. 50. Mother would do well for a couple of months, then she would not attend “for a little while.” *Id.* Shepherd couldn’t gauge Mother’s progress because of her inconsistent attendance. To keep Mother engaged, Shepherd offered Mother rides and allowed her to participate on Zoom, but Mother still would have periods of non-attendance.
- [10] Shepherd referred Mother to William Hollon for extra support in January 2021. But Mother’s engagement with Hollon was “minimal at best.” *Id.* at 46. At the time of the fact-finding hearing, Hollon hadn’t seen Mother in eight months.
- [11] Hope Peer became Father’s recovery coach in March 2020. Father was enrolled in a twenty-four-session program, but he attended only ten sessions and therefore didn’t complete the program. Father was discharged in June 2021.
- [12] Michael Matt received a substance-use-assessment referral for Father in June 2021. Matt was never able to make an appointment with Father, so the assessment was not completed.
- [13] Finally, Father was referred to Robert Day, a Father Engagement specialist, in September 2021. Day did an intake with Father and thought he would “hit the ground running,” but Father then no showed. *Id.* at 91. In November 2021, Day discharged Father “for non-compliance with services.” *Id.* at 92.

[14] Following the fact-finding hearing, the trial court entered an order terminating Mother's and Father's parental rights to Child. In particular, the court found termination is in Child's best interests:

The DCS has clearly and convincingly proven that termination of parental rights is in this child's best interest. Child was born with dangerous controlled substances in her system, and neither parent has varied from their illegal substance use since then. While each parent has shown short periods of drug abstinence, the twenty-seven (27) months of this child's life have been marked by revelation of her significant developmental delays and signs of autism, while both parents continue with long periods of substance abuse, including dangerous use of methamphetamine.

In contrast, the foster family has cared for the child continuously for the past ten (10) months. They provide her with 24/7 care by sober caregivers. They assure she is taken to her very important therapy sessions, every time, and with their assistance, she is making strides to remedy the developmental delays she has suffered to this point. The foster parents are perfectly aware of the child's needs, and that an autistic child will require extra special care and attention for life, and they are willing to adopt her nonetheless.

Appellant's App. Vol. II p. 16.

[15] Parents now appeal.

Discussion and Decision

[16] Parents appeal the termination of their parental rights. When reviewing the termination of parental rights, we do not reweigh the evidence or judge

witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[17] A petition to terminate parental rights must allege, 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 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 prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

I. Findings of Fact

[18] Parents contend two of the trial court’s eighty-one findings are clearly erroneous. Findings are clearly erroneous only when the record contains no facts to support them, either directly or by inference. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[19] Parents first challenge Finding 66:

66. Based upon her observations of Mother and Father, CASA Dunckel has formed the opinion that while they love their child, **both parents would pick drugs over the child.**

Appellant’s App. Vol. II p. 14 (emphasis added). Parents argue the highlighted portion of this finding is “not equivalent” to CASA Dunckel’s actual testimony that she wasn’t “entirely confident” Parents “would choose [Child] instead of using illicit substances.” Although CASA Dunckel didn’t testify in absolute terms that Parents would pick drugs over Child, that is a reasonable inference from her testimony as a whole. As detailed above, CASA Dunckel testified Parents couldn’t move past supervised visits because of their continued drug use and that they were offered inpatient drug treatment but declined. In other

words, Parents couldn't move past supervised visits because they prioritized drugs over Child. Parents haven't established this finding is clearly erroneous.

[20] Parents next challenge Finding 67:

Because of her observations of Mother's and Father's ongoing substance use, and their refusal to check into treatment; because of her perception that the biological parents cannot address Child's autism issues; and because Child has been in DCS care for her entire life, CASA Dunckel has formed the opinion that it would be in Child's best interest to be adopted by the foster family.

Id. Parents first argue this finding is clearly erroneous because CASA Dunckel never used the terms "best interest" or "foster family" in her testimony.

Although CASA Dunckel didn't testify that termination is in Child's "best interest," that is the import of her testimony. CASA Dunckel pointed out Child was twenty-seven months old and had "never not had DCS involvement." She opined Child deserves parents who are "consistent, sober," and "able to maintain her well-being and her safety." In other words, CASA Dunckel said Child deserved different parents. This is just another way to say termination is in Child's best interests.¹

[21] Parents also challenge the portion of Finding 67 that says CASA Dunckel's "perception" is that Parents "cannot address Child's autism issues." Parents

¹ CASA Dunckel didn't testify about Child's foster family, but other witnesses did. Parents don't challenge the trial court's conclusion that there is a satisfactory plan for Child, namely, adoption by the foster family.

point out CASA Dunckel actually testified she was “unsure” if Father could take care of Child’s developmental delays. Tr. Vol. II p. 99. Although CASA Dunckel testified she was “unsure,” a reasonable inference from her testimony as a whole is that Father couldn’t take care of Child’s developmental delays given his failure to complete his own services and continued drug use. Parents haven’t established Finding 67 is clearly erroneous.

II. Best Interests

[22] Parents next contend the trial court erred in determining termination is in Child’s best interests. Deciding whether termination is in a child’s best interests is “[p]erhaps the most difficult determination” a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). The court must look at the totality of the evidence and subordinate the parent’s interests to those of the child. *Id.* Central among these interests is the child’s need for permanency, as the child cannot wait “indefinitely.” *Id.*

[23] In arguing termination is not in Child’s best interests, Parents rely on *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh’g denied*. *G.Y.* is easily distinguishable. In that case, an incarcerated mother committed dealing in cocaine before her child was born, committed no other crimes, and took many positive steps while incarcerated to better herself as a person and a parent, including not using cocaine for the prior five years and completing a drug-rehabilitation program and parenting classes. Here, in contrast, Parents weren’t incarcerated, yet they failed to substantially engage in and benefit from the many services offered to

them. Service providers bent over backwards for Parents; they “hunted” Parents down, drove them to appointments, and “begged” them to do inpatient drug treatment. Even so, Parents didn’t complete their services or stop using drugs. In fact, Parents were still using meth around the time of the termination hearing. Although it’s undisputed that Parents love Child, service providers didn’t think that additional time would help Parents make the changes they needed to. The trial court didn’t have to wait on Parents any longer. We therefore affirm the termination of Mother’s and Father’s parental rights to Child.

[24] Affirmed.

Crone, J., and Altice, J., concur.