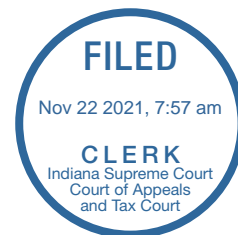


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of:

A.G. and M.G. (Minor
Children),

and

K.G. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

November 22, 2021

Court of Appeals Case No.
21A-JT-999

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

Trial Court Cause No.
79D03-2009-JT-76
79D03-2009-JT-77

Tavitas, Judge.

Case Summary

- [1] K.G. (“Mother”) appeals the termination of her parental rights to her children, A.G. and M.G. (“Children”). Mother contends that the evidence is insufficient to support a finding that termination of Mother’s parental rights was in the Children’s best interests. We conclude that the trial court’s finding regarding the Children’s best interests is not clearly erroneous. Accordingly, we affirm.

Issue

- [2] Mother raises one issue, which we restate as whether sufficient evidence was presented to support the termination of Mother’s parental rights.

Facts

- [3] M.G. was born in January 2016 to Mother and W.A.¹ On August 31, 2017, the Tippecanoe County Office of the Department of Child Services (“DCS”) received a report that M.G. and Mother’s other child² had been physically abused. M.G. had several “bruises and healing scabs on his back that were the result of being hit with a belt.” Tr. Vol. II p. 119. Mother admitted to causing the marks on M.G., and the State charged Mother with two counts of battery as Level 6 felonies. Ultimately, Mother pleaded guilty, and the trial court

¹ W.A.’s parental rights to M.G. were terminated, and he is not a party to this appeal.

² The other child was not a subject of termination of parental rights proceedings because his father was awarded custody of him in October 2018.

sentenced her to two years with 180 days to be served in community corrections and one year and 185 days suspended to supervised probation.

[4] DCS filed a petition alleging that M.G. was a child in need of services (“CHINS”) on September 5, 2017. Specifically, DCS alleged that M.G. was the victim of abuse or neglect by Mother. M.G. was removed from Mother’s care and placed in foster care. The trial court adjudicated M.G. a CHINS on December 12, 2017, and later entered a dispositional order and parental participation decree. The trial court ordered Mother to, among other things: (1) participate in parenting time; (2) participate in a mental health evaluation and follow all recommendations; (3) participate in a parenting assessment and follow all recommendations; (4) participate in case management and follow all recommendations; (5) participate in individual therapy and follow all recommendations; (6) submit to random drug screens; and (7) comply with the terms of her criminal case.

[5] A.G. was born in October 2018 to Mother and E.F.³ A.G., however, remained in Mother’s care despite M.G.’s CHINS proceedings. In December 2018, DCS filed a petition to terminate Mother’s parental rights to M.G. because M.G. had been removed from Mother’s care for more than fifteen months. DCS, however, moved to dismiss the petition in May 2019, and the trial court granted the motion to dismiss.

³ E.F. voluntarily terminated his parental rights to A.G., and he is not a party to this appeal.

- [6] In June 2019, the trial court authorized a trial home visit between Mother and M.G. During the trial home visit, Mother violated the safety plan by allowing M.G. to be around unapproved persons and by failing to notify DCS of her whereabouts with M.G. In September 2019, a petition to revoke Mother's probation was filed after she tested positive for methamphetamine, cocaine, and marijuana. Mother was arrested, and M.G. and A.G. were removed from Mother's care on September 10, 2019. Ultimately, Mother's probation was revoked, and she was ordered to serve 185 days in community corrections.
- [7] DCS filed a CHINS petition regarding A.G. on September 12, 2019, as a result of Mother's positive drug screen and arrest. Mother admitted that A.G. was a CHINS "due to Mother's current unemployment and homelessness." Ex. Vol. I p. 178. Accordingly, the trial court found that A.G. was a CHINS in October 2019. The trial court then entered a dispositional decree and parental participation order, which was similar to the order issued in M.G.'s CHINS action.
- [8] Despite significant services provided to Mother, Mother was unable to maintain stable employment and housing and lacked transportation. Mother was employed at multiple different locations and was repeatedly evicted from housing. Mother was unable to consistently apply what she learned in parenting education sessions and struggled to manage M.G.'s behaviors. Service providers had significant concerns about the safety of the Children when, during a supervised parenting time, Mother left A.G. on the edge of a bed with a propped bottle. When confronted regarding the incident, Mother

called the parenting time facilitator “the Devil” and told M.G. that the facilitator “takes children.” Ex. Vol. II p. 198.

- [9] A psychological evaluation of Mother resulted in a diagnosis of trichotillomania (an obsessive-compulsive hair pulling disorder) and an adjustment disorder with depressed mood, which was in remission. The testing revealed:

[A]lthough [Mother] tests as being of average intelligence, there are indications of thought dysfunction, which could negatively impact her judgment, decision making, and capacity to realistically appraise situations and act accordingly. In addition, [Mother’s] psychological testing is suggestive of someone who is extremely self-absorbed and preoccupied with her own emotional needs to the extent that it could detract from her ability to relate empathically to her children and consistently make their needs an appropriate priority.

Id. at 189. It was recommended that Mother continue with individual therapy; participate in parent education and training; and be referred for medication targeted toward management of her compulsive hair pulling. Mother received individual therapy and worked on managing her anxiety, among other things. Mother admitted that she used marijuana to cope with stressors. Mother’s therapist worked with her to identify other ways to manage stress.

- [10] Following the failed trial home visit, Mother continued to struggle with housing, employment, management of M.G.’s behaviors, and attendance at supervised visitations. Service providers also worked with Mother regarding her relationship with a man, who was violent and abusive. At one point, Mother reported that she was going to marry the man, but she later changed her

mind. In August 2020, the man apparently shot at Mother, and Mother obtained an order of protection.

[11] DCS filed petitions to terminate Mother’s parental rights filed on September 25, 2020. After hearings in December 2020 and February 2021, the trial court entered findings of fact and conclusions thereon terminating Mother’s parental rights in May 2021. Mother now appeals.

Analysis

[12] Mother challenges the trial court’s termination of her parental rights to the Children. The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dept. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[13] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights. Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[14] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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;
- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[15] As an initial matter, we note that Mother does not challenge the trial court's findings of fact as clearly erroneous. Mother has, thereby, waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019) (explaining that this Court will accept unchallenged trial court findings as true). Mother challenges only the trial court's conclusion that termination of her parental rights is in the best interests of the Children. In determining what is in the best interests of a child, 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*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a

child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

- [16] Mother argues that she participated in services, that she made progress in her therapy, that she has a residence and a job, and that she is bonded with the Children. Mother's argument, however, is a request that we reweigh the evidence, which we cannot do.
- [17] Despite years of services, Mother was unable to maintain the stability that the Children needed. At the time of the termination hearing, Mother was living with a co-worker's relative and had not progressed beyond supervised visitations with the Children. Family case manager ("FCM") Maryanne Fernandez testified that the Children, especially M.G., need stability and permanency. M.G. has been diagnosed with an anxiety disorder, and his anxiety causes "reactivity" and "aggression." Tr. Vol. II p. 97. According to M.G.'s therapist, M.G. "needs to know what to expect every day" and "having a structure, having predictability, feeling safe, those are all very important" to M.G. *Id.* at 102. M.G. is "highly affected by change," and a lack of stability and structure will cause M.G. to "become much more defiant and angry." *Id.* at 103-04. M.G. has expressed anxiety about leaving his foster home. M.G.'s therapist testified that Mother was unable "to meet [M.G.'s] needs." *Id.* at 104.
- [18] FCM Fernandez testified that termination of Mother's parental rights was in the Children's best interests because Mother "just [isn't] able to give the children . . . what they need." *Id.* at 150. FCM Tristin Pierson testified that

termination of Mother’s parental rights was in the Children’s best interests because, although Mother has “been offered several services over an extended period of time,” the goals have not been met. *Id.* at 131. FCM Pierson testified that the Children “deserve a permanent and long-term home and caregiver that will provide for their safety, stability, and well-being on a regular basis.” *Id.* Under these circumstances, we cannot say the trial court’s finding that termination of Mother’s parental rights was in the Children’s best interests is clearly erroneous.

Conclusion

[19] DCS presented sufficient evidence to support the termination of Mother’s parental rights, and the trial court’s findings of fact and conclusions thereon are not clearly erroneous. We affirm.

[20] Affirmed.

Mathias, J., and Weissmann, J., concur.