

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary
Termination of the Parent-Child
Relationship of Z.L. (Minor
Child) and

T.L. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

December 30, 2022

Court of Appeals Case No.
22A-JT-1670

Appeal from the Bartholomew
Circuit Court

The Honorable Joseph Meek,
Senior Judge

Trial Court Cause No.
03C01-2111-JT-5862

Crone, Judge.

Case Summary

- [1] T.L. (Mother) appeals an order involuntarily terminating her parent-child relationship with Z.L., to whom she gave birth in January 2016. Mother contends that the Indiana Department of Child Services (DCS) failed to prove the following by clear and convincing evidence: (1) there is a reasonable probability that the reasons for removal are unlikely to be remedied; (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Z.L.'s well-being; and (3) termination is in Z.L.'s best interests. Because Mother has not demonstrated clear error, we affirm.

Facts and Procedural History

- [2] One evening in February 2020, the Columbus Police Department received a report of an unknown young child found in the street. Responding officers learned that then-four-year-old Z.L. had been left at the residence of a caregiver who was so intoxicated that the caregiver had to be hospitalized. Z.L.'s parents were nowhere to be found. Upon notification, DCS removed Z.L. and placed him in foster care. DCS scheduled a meeting with Mother the following day. When Mother failed to show up, DCS set another meeting. Mother arrived more than an hour late to the rescheduled meeting.
- [3] DCS filed a petition alleging that Z.L. was a child in need of services (CHINS) due to Mother's failure to secure appropriate caregivers for Z.L. At the time, the alleged father, J.F., was in prison. Eventually, a different man, J.T., was

discovered to be Z.L.'s biological father.¹ DCS amended the CHINS petition accordingly.

[4] The court held a hearing in July 2020 and the following month issued an order adjudicating Z.L. a CHINS. The order outlined Mother's history of DCS involvement² and a September 2019 assessment for homelessness and use of substances. The court also found that for four months during 2019, Mother left Z.L. with L.K., whom Mother had "never met" and whose home Mother had never seen. Ex. Vol. at 15. Of concern, L.K. reported that no legal guardianship existed, that L.K. often had trouble contacting Mother to seek medical treatment for Z.L., that Z.L. exhibited sexualized behavior, and that Z.L. appeared to be homeless. In addition, the order detailed Mother's nonparticipation in services and missed visits, noted troubling behavior by Z.L. when Mother did visit, and found:

Because of Mother's inability or refusal to supervise [Z.L., he] has suffered significant sexual abuse during his time in her care. Mother has failed to adequately care for [Z.L.] Mother does not have a stable home for [Z.L.] to return to. Mother will need services from [DCS] in order to be able to reunify with [Z.L.],

¹ J.T.'s engagement in services was minimal, and he does not participate in this appeal.

² In April of 2016, in Bartholomew County, a court terminated Mother's rights to M.R., one of Mother's six children. The termination order regarding M.R. found that at the time Bartholomew County DCS became involved, Mother had an "open CHINS case with another child in Jennings County which she had not participated in." Ex. Vol. at 43. Additional findings noted Mother's "prior history with Bartholomew County DCS" that resulted in the 2007 involuntary termination of the parent-child relationship between Mother and two other children. *Id.* The 2016 findings also noted that counseling was recommended for Mother to "address trauma related to the death of an earlier born child and Mother's own childhood and adulthood experiences in violent relationships." *Id.* at 44.

and Mother is unlikely to get the help she needs without the coercive intervention of the Court. Mother's failure to supervise and care for [Z.L.] is not solely due to poverty.

Id. at 16.

- [5] Following a dispositional hearing, the court issued a December 2020 order, which continued Z.L.'s placement in foster care and required Mother to participate in recommended reunification services such as assessments, therapies, and treatments. The order also required Mother to secure employment and housing, establish paternity, work with caseworkers, obey all laws, and provide drug screens. Around the same time, DCS suspended Mother's visits with Z.L. due to her inconsistent attendance and the negative effects Z.L. exhibited when visits did occur. Also in December, Mother participated in an assessment at a treatment center. She was diagnosed with opioid use disorder (severe), stimulant use disorder (severe, amphetamine-type substance), cannabis use disorder (moderate), posttraumatic stress disorder, and major depressive disorder (recurrent episode, severe). *Id.* at 86-87.
- [6] Thereafter, Z.L.'s behavior improved. Meanwhile, Mother entered but failed to complete various substance abuse treatment programs. Mother admitted to using methamphetamine multiple times per week, heroin or fentanyl daily, and tetrahydrocannabinol daily. During 2021, Mother did not cooperate with some drug screens, tested positive during other screens, did not engage in home-based therapy or case management, did not attend assessments, and was out of communication with DCS during significant amounts of time. Absent a

showing of consistency in services and completion of a substance treatment program, Mother's visits with Z.L. never resumed.

- [7] In November 2021, the court approved a permanency plan of adoption of Z.L., and DCS filed a petition to terminate parental rights. Two months after an April 2022 factfinding, the court issued its twelve-page order terminating the parent-child relationship between Mother and Z.L.³ This appeal ensued.

Discussion and Decision

- [8] We have long applied a highly deferential standard of review in cases involving the termination of parental rights. *In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). We neither reweigh evidence nor assess witness credibility. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence and reasonable inferences favorable to the trial court's judgment. *Id.* Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* Unchallenged findings stand as proven. *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*; *In re De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020). In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child

³ We were greatly aided in our review by the court's extremely detailed, well-organized order consisting of fifty-four findings.

relationship only if it is clearly erroneous. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Clear error is that which “leaves us with a definite and firm conviction that a mistake has been made.” *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied*. “[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal.” *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[9] “Parents have a fundamental right to raise their children—but this right is not absolute.” *In re Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). When parents are unable or unwilling to meet their parental responsibilities, their parental rights may be terminated. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). A petition to terminate a parent-child relationship 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) (emphasis added). DCS must prove the elements by “clear and convincing evidence.” *In re R.S.*, 56 N.E.3d 625, 629 (Ind. 2016).

DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[10] Mother challenges the finding that there “is a reasonable probability that the conditions that resulted in [Z.L.’s] removal or the reasons for placement outside the home of [Mother] will not be remedied” and that there “is a reasonable probability that the continuation of the parent-child relationship poses a threat” to Z.L.’s well-being. Appealed Order at 11 (finding 54); *see also id.* at 6 (finding 26). Mother highlights her attempts at treatment, efforts to attain housing, and Z.L.’s attachment. In sum, she asks for more time and “the right support system” to achieve sobriety so she can take care of Z.L. Appellant’s Br. at 9.

[11] At the April 2022 factfinding hearing, the DCS family case manager testified that the conditions that led to Z.L.’s removal, “stability and housing, substance abuse concerns and concerns for [Mother’s] overall mental health,” were not remedied by Mother. Tr. Vol. 2 at 67. Indeed, Mother testified that she was homeless, had been homeless since the end of 2019, was not employed, and depended on “family help” to support herself. *Id.* at 44-45. The case manager

testified that throughout “the last two years of the open case,” Mother had not completed or been consistent with any of the services offered by DCS, including five different substance abuse treatment programs. *Id.* at 67-68. As a result, the case manager did “not believe more time would make a difference.” *Id.*

[12] Given the above testimony, coupled with exhibits detailing Mother’s previous history with DCS, the court’s conclusion regarding the improbability of remedied conditions is not clearly erroneous. To the contrary, Mother’s pattern of unwillingness or lack of commitment to address her issues or cooperate with services demonstrates the requisite reasonable probability that the conditions will not change. *See In re G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017). For us to conclude otherwise would constitute an impermissible reweighing of evidence and judging of credibility, which we will not do.⁴

[13] Mother also takes issue with the finding that termination is in Z.L.’s best interests. She argues: “if Mother were able to obtain sobriety and stability, and then repair her relationship with Z.L., it would help alleviate the abandonment issues Z.L. has dealt with throughout the CHINS case.” Appellant’s Br. at 14. Again, Mother is essentially asking for more time.

[14] A decision regarding whether termination is in a child’s best interests is

⁴ The court also made extensive findings to support the conclusion that there is a reasonable probability that continuation of the parent-child relationship between Mother and Z.L. poses a threat to Z.L. However, because DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B), we need not address Mother’s challenge to the conclusion that continuation of the relationship poses a threat.

perhaps the most difficult determination the trial court must make. To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children. Central among these interests is children's need for permanency. Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.

Ma.H., 134 N.E.3d at 49 (citations and internal quotations omitted).

[15] Here, Z.L.'s court appointed special advocate (CASA) testified that Z.L. had been in foster care for more than two years, that he needed a stable environment, and that he would get that via the foster family adopting him. Likewise, the CASA did not believe that it would be in the best interests of Z.L. to keep the case open so Mother could try to obtain stability and sobriety because "DCS [has] offered services [to Mother] multiple times. I don't feel like an extension of that would make any difference." Tr. Vol. 2 at 114. Z.L.'s first therapist testified that the child struggled with attachment and emotional regulation, which worsened when he visited with Mother. Z.L.'s current therapist testified that some of Z.L.'s behaviors were attributed to neglect and trauma that he experienced in Mother's care. She further testified that Z.L. expressed severe worry about stability, that he seeks extra comfort from his foster mother, and that he demonstrates a "lack of security" attributable to lack of protection from Mother. *Id.* at 97. The current therapist opined that terminating parental rights and allowing for adoption would give Z.L. needed security in contrast to living in an unstable environment with a parent using illegal substances.

[16] Z.L.'s case manager testified that DCS believed termination of parental rights and adoption by the foster family were in Z.L.'s "best interest." *Id.* at 72. The case manager described the foster family, with whom Z.L. had been placed for twenty months, as follows:

They've done very well caring for him. They get him to school every day, he continues to have weekly therapy and they manage to make sure he gets to all of his therapy appointments and contacts his therapy about any ongoing behaviors or any concerns that they have for him. They see that he gets all the medical attention and everything that he needs.

Id. at 71. The case manager further stated that permanency was important for Z.L. because he is comfortable in the foster home, he has "been there the longest, they have been able to find him stability, structure and love. I know that it's been expressed that he's not always had that in the past." *Id.*

[17] Where, as here, the testimony of service providers supports a finding that termination is in Z.L.'s best interests, we will not second-guess the court. *See McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Because the evidence does not positively require the conclusion contended for by Mother, we find no basis for reversal of the termination.

[18] Affirmed.

May, J., and Weissmann, J., concur.