

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Frederick Vaiana
Voyles Vaiana Lukemeyer
Baldwin & Webb
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re the Termination of the
Parent-Child Relationship of:
D.P. (Minor Child)

T.P. (Mother),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner

February 13, 2024

Court of Appeals Case No.
23A-JT-1281

Appeal from the Crawford Circuit
Court

The Honorable Justin B. Mills,
Judge

Trial Court Cause No.
13C01-2205-JT-7

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

- [1] T.P. (Mother) appeals the termination of her parental rights over D.P. (Child).¹ The Indiana Department of Child Services (DCS) petitioned to terminate Mother's parental rights following years of her using drugs, failing to engage in reunification services, and going through multiple out-of-state arrests and incarcerations. Finding no clear error in the trial court's judgment, we affirm.

Facts

- [2] Child's involvement with DCS began at birth. While Mother was still at the hospital, a DCS caseworker came to investigate a report regarding Mother's two older children. But during the interview, the caseworker became concerned about Child's care because Mother appeared to be under the influence of some substance. Mother admitted taking ephedrine but denied other drug use. The caseworker arranged extra precautions with hospital staff to ensure Child's protection.
- [3] Later that night, Mother called the caseworker and appeared agitated and erratic. DCS then requested that she complete a drug screen. When the screen came back positive for methamphetamine and amphetamine, DCS removed Child from Mother's care and petitioned to declare Child a child in need of

¹ Child's biological father's parental rights were also terminated, but he does not join in this appeal.

services (CHINS). The trial court ordered Child's continued removal at a detention hearing.

[4] Shortly after Child's removal, Mother moved to Louisville. While there, Mother was arrested for fighting a gas station employee. But DCS still made efforts to coordinate supervised visits between Mother and Child. The visits did not occur, however, due to Mother's inebriation or her refusal to participate due to her belief that "the Department had kidnapped her child." Tr. Vol. II, p. 54. Child was soon placed in a foster home in the Indiana town in which Mother had lived before her move to Louisville.

[5] Mother did not appear for the fact-finding hearing, after which the trial court determined Child to be a CHINS. In its order, the trial court reasoned a CHINS determination was proper because Mother had failed to stay in contact with DCS, had not cooperated with services or visitation, and could not provide for Child's care without court intervention. After a dispositional hearing, the trial court ordered Mother to maintain stable and appropriate housing, undergo a parenting assessment and psychological evaluation, complete all the resulting recommendations, refrain from drug use, complete drug screens, and attend all scheduled visitations.

[6] Mother completed essentially none of her required services. In the months that followed the CHINS disposition, Mother moved to New Mexico, where she was arrested. She later was incarcerated in North Carolina. Mother attended most of her scheduled virtual visits with Child during this period. But Mother's

noncompliance with services prompted the trial court to modify Child's permanency plan from reunification to a concurrent plan of termination and adoption. DCS then petitioned to terminate Mother's parental rights.

[7] Mother made intermittent progress towards engaging in her services following DCS's termination petition. Yet at the time of the termination hearing, Mother was incarcerated in Florida on drug related charges. She was also on probation in North Carolina and had legal troubles in Texas as well. The DCS caseworkers who worked with Mother and Child unanimously supported the termination of Mother's parental rights, which the trial court ultimately ordered.

Discussion and Decision

[8] We review an order terminating parental rights for clear error. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Indiana Code § 31-35-2-4(b)(2) requires that a petition to terminate a parent-child relationship 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;

(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 must terminate the parent-child relationship

Ind. Code §§ 31-35-2-8, -37-14-2. When reviewing a trial court's decision to terminate parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d at 628.

[9] Mother does not challenge any specific portion of the trial court's order terminating her parental rights. Instead, Mother alleges that it was "fundamentally unfair" to have Child "snatched away" and separated from her at birth. Appellant's Br., p. 10. Why or how this was unfair, Mother does not explain.²

[10] Of course, DCS had compelling reasons to remove Child. These reasons included Mother's drug use from the moment of Child's birth and her repeated out-of-state arrests and incarcerations. Mother barely participated in services, and outside of virtual visitations, she showed little interest in Child, who was not bonded to Mother. The DCS caseworkers who have worked with Mother

² Not only is Mother's brief deficient in this regard, but Mother relies on only one case which she miscites and misconstrues. Mother asserts that "[t]he trial court's order violates due process because it does not pass the test of fundamental fairness as defined by *Baxter*." Appellant's Br., p. 10. Presumably Mother meant "*Bester*" and not "*Baxter*." See *Bester v. Lake City Off. Of Fam. & Child.*, 839 N.E.2d 143 (Ind. 2005). *Bester* does not contain a "test" about fundamental fairness and due process.

and Child unanimously agreed that termination was in Child's best interests. The trial court properly relied on this evidence in reaching its decision.

[11] Finding no clear error in the trial court's termination of Mother's parental rights, we affirm.

Mathias, J., and Tavitas, J., concur.