

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary
Termination of the Parent-Child
Relationship of: D.H. and A.H.
(Minor Children),

and E.H.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 12, 2021

Court of Appeals Case No.
20A-JT-2040

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Judge

Trial Court Cause Nos.
45D06-2005-JT-68
45D06-2005-JT-69

Bradford, Chief Judge.

Case Summary

[1] In July of 2014, the Indiana Department of Child Services (“DCS”) responded to a report that E.H. (“Mother”) had twisted child D.H.’s arm and that D.H. and A.H. (collectively, “the Children”) were dirty and smelled. DCS removed the Children from Mother’s care the next day. Over the course of DCS’s involvement with the family, the Children and Mother were all diagnosed with significant mental-health issues. Mother refused to acknowledge that she or the Children suffered from these mental-health issues. Further, though Mother has participated in most services recommended by DCS, she has not improved her parenting style or independently implemented any of the information taught during services. Service providers and DCS family case managers (“FCMs”) noted marked improvements in the Children’s mental-health after they were placed with Foster Mother, who is willing, and the DCS has recommended, to adopt the Children. On October 23, 2020, following a recommendation by DCS that Mother’s parental rights be terminated and the Children be adopted, the juvenile court entered an order terminating Mother’s parental rights. Mother appeals, arguing that DCS failed to prove by clear and convincing evidence that there was a reasonable probability that she would not remedy the conditions resulting in the Children’s removal and continued placement outside her care, the termination of her parental rights was in the Children’s best

interests, and DCS had a satisfactory plan for the care and treatment of the Children. We affirm.

Facts and Procedural History

- [2] On July 30, 2014, when DCS attempted to assess a report that Mother had twisted D.H.'s arm and that the Children were dirty and smelled, Mother did not answer the door. When she did eventually open the door, Mother gave false names for her and the Children to DCS. DCS found that the home had "minimal food" and smelled "of urine." Appellant's App. Vol. II. p. 7. DCS FCM Anabel Quiroz-Aguilar observed Mother twist D.H.'s arm when she lifted him from the couch. Mother also indicated that the Children slept on the couch. Mother was not cooperative during the assessment and refused when FCM Quiroz-Aguilar requested that Mother take D.H. to the doctor to ensure that he was not injured.
- [3] DCS removed the Children from Mother's care the next day because of the "erratic behavior of [Mother], the refusal of medical care, the home having an odor of urine, [and] minimal food in the home." Appellant's App. Vol. II pp. 7–8. When DCS arrived to remove the Children, Mother tried to prevent DCS and law enforcement from entering. Eventually DCS and law enforcement entered the home, and found A.H. in a closet, sweating. Mother requested her purse several times during removal, which it was later discovered contained a loaded gun. Further, Mother assaulted a police officer and threatened to "find

[the FCM], slit her throat and kill her.” Appellant’s App. Vol. II p. 14. Mother was arrested and taken to jail.

[4] DCS took the Children to a local office where they cleaned them, changed their clothes, and fed them. DCS placed the Children in foster care. On August 5, 2014, DCS filed petitions alleging the Children were children in need of services (“CHINS”). That same day, the juvenile court held an initial/detention hearing and authorized the Children’s removal from Mother’s care. On October 30, 2014, the juvenile court held a factfinding hearing and adjudicated the Children as CHINS. The court proceeded to a dispositional hearing and ordered Mother to participate in services DCS recommended in the predisposition report. The juvenile court also ordered Mother, in pertinent part, to maintain suitable housing, refrain from the use of drugs and alcohol, ensure that the Children participate in homebased counseling, complete a parenting assessment and all recommended services, complete a substance-abuse evaluation and all recommended treatment, complete a psychological evaluation and all recommended treatment, take all medications as prescribed, and attend all scheduled visitation with the Children.

[5] DCS discovered that both of the Children had significant mental-health needs. When A.H. was first placed in foster care she struggled with defecating herself, smearing it on herself and on the walls, drinking from the toilet, removing her clothing when she got upset, chewing on the inside of her cheeks until injured, banging her head against the wall, biting herself, and pulling clumps of her hair out. On January 7, 2016, Jill Miller, Psy.D, completed a psychological

evaluation of A.H. Dr. Miller noted that A.H.'s verbal abilities were "significantly underdeveloped" for a three-year-old and that she may have a developmental disorder. Ex. Vol. II at 22. Dr. Miller recommended that A.H. receive wraparound services, be referred to a speech pathologist, and undergo future psychological evaluation. On February 23, 2018, Elizabeth Mango, M.D., evaluated A.H., concluding that A.H. "[had] very low cognitive ability," "mainly act[ed] on impulse," and was "very aggressive." Ex. Vol. II p. 26. Dr. Mango also recommended A.H. receive future health services and more psychological evaluation. On December 3, 2019, psychiatric nurse practitioner ("NP") Theresa Cieslinski conducted a psychological evaluation on A.H. NP Cieslinski determined that A.H. presented with a history of anxiety and ADHD.

- [6] Medical professionals conducted multiple psychological evaluations with D.H. over the course of his time in the foster care. D.H. was characterized early on as being very sweet and showing empathy for his sister, despite having been previously diagnosed with schizophrenia, ADHD, and PTSD. D.H. had night terrors, had violent outbursts, and experienced hallucinations. D.H. made "significant" progress in foster care, improving his behavior over the two years leading up to the termination hearing. Tr. Vol. II pp. 32–33. At trial, NP Cieslinski summarized D.H.'s improvements by testifying that D.H. is "no longer aggressive. He is no longer having violent outbursts. He is more flexible. He is more oriented to reality [. . .] He's not having the auditory visual hallucinations he was having. He's not as delusional." Tr. Vol. II pp.

34–35. Svetlana Medvedeva, Psy.D, who completed a psychological evaluation with D.H., concluded that he needed a structured environment both at home and school and recommended that he continue psychiatric treatment and therapy.

[7] DCS provided Mother with services directed toward reunification with the Children, including individual therapy, supervised visitation, “hands-on parenting,” homebased case management, and several assessments or evaluations. Tr. Vol. II p. 45. Mother completed a psychological evaluation on July 16, 2015, after which the evaluator determined that Mother was not a good candidate for psychotherapy because of her “limited insights and intellectual limitations,” and that Mother “is unlikely to be able to manage and maintain a household on her own. [Mother] is likely to function best when living in a setting where she can be guided through daily activities.” Ex. Vol. I p. 46. Mother attended services, but she never progressed because she could not grasp the concept of safety for the Children and could not provide safety during visitation.

[8] On November 4, 2016, while Mother was living with the Children’s Maternal Grandmother, DCS placed the Children into Mother’s care for a trial home visit. Around Thanksgiving, Maternal Grandmother called DCS and requested that DCS remove the Children “because they were tearing up [her] home.” Tr. Vol. II p. 46. DCS also received a report that Mother had spanked D.H. with a belt. DCS removed the Children, and eventually placed them with Foster Mother. After the Children were removed, Mother moved out of Maternal

Grandmother's home in order to seek her own housing and indicated that she did not want to participate in services. Mother eventually completed a psychological evaluation, after which Dr. Miller diagnosed Mother with an intellectual disability and schizophrenia, concluding that Mother "will require significant supports in caring for her children and their mental-health needs, as well as her own." Ex. Vol. I p. 111. DCS referred Mother to psychological and psychiatric evaluations to learn how to better provide her services, because Mother did not seem to understand what service providers were telling her. However, Mother denied that she or the Children had any of the diagnosed mental disabilities.

[9] When Mother was allowed visits, supervisors noticed a trend of "chaotic" behavior which suggested that she was unable to care for the Children safely. Tr. Vol. II p. 63. Mother would follow directions, but often needed prompting during visits and would look to visitation supervisors or parenting educators as to what she should do, rarely acting independently. During one visit, D.H. ran toward a ravine with water in it, and if a visitation facilitator had not run after him, D.H. would have gone into the ravine. Additionally, in March of 2018, the juvenile court had to order Mother not to wear any lipstick around the Children because it was a trigger for D.H.; Mother, however, continued to wear lipstick to visits. FCM Natalie Boring, who has been the case manager since September of 2017, observed approximately fifty visits between Mother and the Children, and did not see an increase in Mother's parenting abilities.

[10] By October of 2018, DCS recommended that the juvenile court change the Children’s case plan to termination of parental rights and adoption. Matthew Castelino, M.D., Mother’s psychiatric provider, and Mother’s homebased case manager both concluded that Mother was unable to care for the Children at the time. Dr. Castelino opined that Mother’s “mental, physical and cognitive health challenges hinder[] her ability to provide a safe and nurturing home environment for her children at this time.” Ex. Vol. II p. 48. On May 15, 2019, the court approved the permanency plan to initiate termination proceedings and adoption.

[11] The Children have an “intense” schedule that Foster Mother maintains and any deviation from that affects their mood and behaviors. Tr. Vol. II p. 86. NP Cieslinksi, who has seen the Children five times since their evaluation in December of 2019, concluded that it would not be in the Children’s best interests if they returned to Mother’s care and that being placed back into Mother’s care would trigger their negative behaviors. FCM Boring was concerned that Mother has not accepted the Children’s diagnoses and that, therefore, they would not receive the proper treatment and Mother could not provide appropriate supervision for the Children. DCS’s plan for the Children upon termination of Mother’s parental rights is adoption, and would not recommend guardianship by Maternal Grandmother, because Foster Mother could provide the Children with consistency and stability that they need. On October 23, 2020, the court entered its order terminating Mother’s parental rights to the Children.

Discussion and Decision

[12] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Moreover, we acknowledge that the parent–child relationship is “one of the most valued relationships of our culture.” *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children’s interests in determining the appropriate disposition of a petition to terminate the parent–child relationship. *Id.* The Indiana Supreme Court has made clear that the “purpose of terminating parental rights is not to punish parents, but to protect the children.” *Egly v. Blackford Cty. Dep’t. of Pub. Welfare*, 592 N.E.2d 1232, 1234–35 (Ind. 1992). The *Egly* Court also explained that “[a]lthough parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents.” *Id.* at 1234. Termination of parental rights is proper where the children’s emotional and physical development is threatened. *In re T.F.*, 743 N.E.2d at 773. The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[13] When reviewing an order terminating parental rights, we do not “reweigh the evidence or determine the credibility of witnesses,” but instead determine only whether the evidence supports the judgment. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016). This is a two-step review, which requires us to determine “whether the evidence clearly and convincingly supports the findings, and whether the findings clearly and convincingly support the judgment.” *Id.* We “give ‘due regard’ to the trial court’s opportunity to judge the credibility of the witnesses firsthand.” *K.T.K. v. Ind. Dep’t of Child Servs., Dearborn Cty. Office*, 989 N.E.2d 1225, 1229 (Ind. 2013). We will “not set aside findings or judgment unless clearly erroneous.” Ind. Trial Rule 52(A); *see also In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). Reversal is appropriate only if we find that the juvenile court’s decision is against the logic and effect of the facts and circumstances before the Court or the reasonable inferences drawn therefrom. *In re Guardianship of B.H.*, 770 N.E.2d 283, 288 (Ind. 2002).

[14] Indiana Code section 31-35-2-4(b)(2) governs what DCS must allege and establish to support the termination of parental rights, and, for purposes of our disposition, that was:

- (A) that [t]he child has been removed from the parent for at least six (6) months under a dispositional decree[;]
[....]
- (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 [or]

- (ii) There is a reasonable probability that the continuation of the parent–child relationship poses a threat to the well-being of the child.

[...]

- (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). Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS need only establish one of the circumstances described in that subsection, two of which are listed above. Mother challenges whether DCS proved by clear and convincing evidence that there was a reasonable probability that she would not remedy the conditions resulting in the Children’s removal and continued placement outside her care, whether the termination of her parental rights was in the Children’s best interests, and whether DCS had a satisfactory plan for the care and treatment of the Children.

I. Indiana Code Section 32-35-2-4-(b)(2)(B)(i)

[15] Mother challenges the juvenile court’s conclusion that there was a reasonable probability that she would not remedy the conditions resulting in Child’s removal and continued placement outside her care. However, Mother does not challenge the juvenile court’s conclusions that there was a reasonable probability that the continuation of the parent-child relationship for Mother and the Children posed a threat to the Children’s well-being. “[B]ecause Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court need only find that one of the three requirements of that subsection has been established by clear and convincing evidence.” *In re S.K.*, 123 N.E.3d 1225,

1233 (Ind. Ct. App. 2013) (citing *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*). Because the juvenile court concluded that the continuation of Mother and the Children's parent-child relationship was a threat to the Children's wellbeing, but Mother only challenges the failure-to-remedy conclusion, she has waived any challenge to the juvenile court's other conclusion under Indiana Code section 31-35-2-4(2)(B). See *In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007). We nonetheless choose to address Mother's contention on the merits.

[16] DCS removed the Children from Mother's care in 2014 because of Mother's "erratic behavior," her refusal to provide medical care to D.H. after DCS suggested it, the condition of the home they lived in, and the lack of food in the home. Tr. Vol. II pp. 12–13; Ex. Vol. I p. 5. The Children were eventually returned to Mother's care for an in-home-visit in November of 2016 but were removed in December of 2016 because they were tearing up the home and DCS received a report that Mother had hit D.H. with a belt. The Children were removed from Mother's care for the remainder of the case, and Mother has failed to maintain stable housing suitable for the Children or improve her parenting style in that time. Mother's failure to benefit from services after six years of DCS involvement supports the juvenile court's conclusion that she will not remedy the conditions that led to the Children's removal and continued placement outside Mother's home. FCM Boring, who had attended approximately fifty visits with the Children and Mother, testified that she did not see any progress in Mother's parenting abilities. Further, Mother has

continuously denied that she or the Children were suffering from mental-health issues, and Mother refused to participate in services geared toward individuals with disabilities. Receiving services alone is not sufficient evidence to show that conditions have been remedied if the services do not result in that needed change, and the parent does not acknowledge a need for change. *See In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (concluding that the juvenile court properly terminated the parent child relationship where a parent with mental-health impairments participated in but failed to benefit from services).

[17] Mother also challenges whether the evidence supports the juvenile court’s finding that,

Mother had mental-health issues that were not being addressed Both children had multiple mental-health issues that were not being addressed by the parents Mother was unable to care for the basic needs of the children and these children require extensive care due to their mental-health issues. All efforts have failed with regards to [M]other’s parenting skills and understanding of the [C]hildren’s mental-health needs. Due to [M]other’s mental-health issues, mother was unable to safely parent [Children].”

Appellant’s App. Vol. II pp. 3–4. While Mother challenges this finding, others remain unchallenged and therefore must be accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (stating that unchallenged findings must be accepted as correct.) Mother argues that this factual finding is unsupported because there was no evidence outlining how Mother’s mental-health diagnoses otherwise impeded her parenting skills, and that there was no nexus between Mother’s parenting style and a negative effect to the Children’s safety. Mother

claims that this case is similar to *Matter of L.N.*, in which the court concluded that there must be a nexus between mental-health or intelligence and actual endangerment. 118 N.E.3d 43, 49 (Ind. Ct. App. 2019). In *L.N.*, a panel of this court reversed a CHINS finding because there was no evidence that the parents' mental-health and low intellect seriously endangered the children. We are unpersuaded. There is substantial evidence that Mother's parenting style impacted the safety and well-being of the Children. During one visit, D.H. ran toward a ravine with water in it and if a visitation facilitator had not run after him D.H. would have gone into the ravine. Further, the juvenile court had to order Mother not to wear any lipstick around the Children because it was a trigger for D.H. but Mother continued to wear lipstick to visits despite this order. Despite getting advice and services geared toward making her parenting style safer and better suited for the Children's substantial needs, Mother failed to grasp the concepts service providers tried to teach her and failed to improve her parenting style over the course of years of services and visitation. The juvenile court's fact finding was not unsupported. Even ignoring the challenged finding, the juvenile court found a satisfactory factual basis to support the judgment. Mother argues that the reasons for removal have been remedied because she participated in services, maintained contact with the Children and attended visits, and acknowledged the Children's needs. We view this as simply a request to reweigh the evidence, which we will not do. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016).

II. Indiana Code Section 31-35-2-4(b)(2)(C)

[18] Mother's contends that the termination of her parental rights is not in the best interests of the Children. We are mindful that the juvenile court is required to look beyond the factors identified by DCS and look to the totality of evidence when determining what is in the best interests of the Children. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the interests of the children involved must supersede that of the parents. *Id.* Furthermore, this court has previously determined that the testimony of a GAL regarding a child's need for permanency supports a finding that termination is in the child's best interests. *In the matter of Y.E.C.*, 534 N.E.2d 273, 276 (Ind. Ct. App. 1992).

[19] NP Cieslinski was asked if she thought that it was in the Children's best interests to be returned to the care of Mother and she replied "[i]t is not." Tr. Vol. II. p. 36. NP Cieslinski also expressed serious concern that Mother was incapable of grasping or admitting that she and the Children had mental-health issues. Moreover, FCM Boring testified that, even placing the Children with Maternal Grandmother would not be in their best interests, as it was uncertain that she could provide the consistency and care that the Children needed. While NP Cieslinski and FCM Boring's testimony is likely sufficient to sustain a finding that removal was in the Children's best interests, it does not stand alone. As mentioned, Mother has consistently failed to utilize the information provided during DCS services to improve her parenting for the Children's well-being. Mother has also consistently failed to appreciate the severity of the Children's needs by refusing to accept their mental-health diagnoses and the

care those needs necessitate. Mother's inability and refusal to parent the Children safely and with care for their mental health are sufficient evidence that removal was in Children's best interests.

[20] Further, the Children's mental health issues have improved significantly since their removal and placement with Foster Mother. NP Cieslinski noted of D.H., that after placement with Foster Mother D.H. was "no longer aggressive. He is no longer having violent outbursts. He is more flexible. He is more oriented to reality[. . .] He's not having the auditory visual hallucinations he was having. He's not as delusional." Foster Mother testified regarding the significant effort she puts in to work with A.H. to make up for her developmental delays:

A lot of things that she does is . . . like nine-month to anywhere to two-years-old level. I have to do school with them every day. I'm doing e-learning with them, and I have to do the speech therapy with her and occupational therapy with her online. I do one-on-one work with her every single day.

Appellant's App. Vol. II p. 24. FCM Boring also testified that adoption by Foster Mother was the plan for the Children going forward, and that they were currently doing "wonderfully" in their new situation. Tr. Vol. II. p. 80. Both Children are being cared for based on their needs and are in markedly better situations. The juvenile court had ample evidence to conclude that removal and placement with Foster Mother would be in Children's best-interests.

III. DCS's Plan for the Care and Treatment of Children

[21] Mother challenges whether DCS had a satisfactory plan, despite the fact that DCS planned for the Children to be adopted. “[I]n order for the trial court to terminate the parent-child relationship the trial court must find that there is a satisfactory plan for the care and treatment of the child.” *In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000) (citing Ind. Code § 31-35-2-4(b)(2)(D)). “This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *Id.* (citing *J.K.C. v. Fountain Cty Dep’t of Pub. Welfare*, 470 N.E.2d 88, 93 (Ind. Ct. App. 1984)). “Attempting to find suitable parents to adopt the children is clearly a satisfactory plan.” *Lang v. Starke Cty. Office of Family & Children*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007) (citing *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997)).

[22] DCS had a specific pre-adoptive family selected at the time of the termination hearing, and Foster Mother testified that she is willing to adopt the Children. The evidence supports the conclusion that the Children have thrived with Foster Mother. The Children have been in Foster Mother’s care since March of 2017, and psychological evaluators have observed substantial improvements in the Children’s behavior since being in her care. Further, psychological evaluators have concluded that the Children require structure and consistency, which Foster Mother provides through an “intense” schedule. Tr. Vol. II p. 86. Finally, psychological evaluators have concluded that returning the Children to Mother’s care would likely lead to the Children regressing into negative behaviors that they exhibited when services began. We conclude that DCS

produced sufficient evidence to sustain a finding that it has a satisfactory plan for the care and treatment of Children.

[23] The judgment of the juvenile court is affirmed.

Vaidik, J., Brown, J., concur.