

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Carlos I. Carrillo
Greenwood, 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
A.Z., B.Z., E.Z., and F.Z.
(Minor Children);
C.Z. (Mother),
Appellant-Respondent

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 31, 2022

Court of Appeals Case No.
21A-JT-2120

Appeal from the Johnson Circuit
Court

The Honorable K. Mark Loyd,
Senior Judge

The Honorable Michael T. Bohn,
Magistrate

Trial Court Cause No.
41C01-2103-JT-7
41C01-2103-JT-8
41C01-2103-JT-9
41C01-2103-JT-10

Pyle, Judge.

Statement of the Case

[1] C.Z. (“Mother”) appeals the termination of the parent-child relationships with her four children, A.Z. (“A.Z.”), B.Z. (“B.Z.”), E.Z. (“E.Z.”), and F.Z. (“F.Z.”) (collectively “the Children”), claiming that there is insufficient evidence to support the terminations.¹ Specifically, Mother argues that the Department of Child Services (“DCS”) failed to prove by clear and convincing evidence that termination of the parent-child relationships is in the Children’s best interests. Concluding that there is sufficient evidence to support the termination of the parent-child relationships, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

[3] Mother and Father (collectively “Parents”) are the parents of daughter, A.Z., who was born in September 2011; daughter, B.Z., who was born in November 2012; son, E.Z., who was born in November 2015; and daughter, F.Z., who was born in January 2017. F.Z. suffers from Aicardi Syndrome, which is a rare

¹ The Children’s father (“Father”) voluntarily relinquished his parental rights to A.Z., B.Z., and E.Z., and the trial court terminated his parent-child relationship with F.Z. Father is not a party to this appeal.

congenital birth disorder. Aicardi Syndrome is characterized by malformations in the brain, eyes, and other parts of the body and can lead to seizures, intellectual disabilities, and developmental delays.

- [4] In February 2020, the Children were removed from the home because of Parents' domestic violence and substance abuse issues. In addition, Father had dropped F.Z. on her head and had refused to allow Mother to seek medical attention for the child. DCS filed petitions alleging that the Children were children in need of services ("CHINS").²
- [5] The following day, the Children were returned to Mother because Father had left the home. However, twelve days later, the Children were removed from Mother after she tested positive for methamphetamine. A.Z., B.Z., and E.Z. were placed together in foster care and F.Z. was hospitalized.
- [6] In March 2020, DCS filed amended petitions alleging that the Children were CHINS. The amended petitions alleged that one of Parents' adult children, who had a substantiated history of sexually abusing his sisters, was residing in the home in his sisters' bedroom. The amended petitions further alleged that, since the filing of the initial CHINS petitions, F.Z. had been admitted to Peyton Manning Children's Hospital because she was dehydrated and had not been eating. When F.Z. had been released from the hospital with a feeding tube,

² The Parents' daughter Ay.Z., ("Ay.Z."), who was born in 2002, was included in the CHINS petition. However, Ay.Z. turned eighteen years old during the pendency of the proceedings and is not included in this appeal.

Mother had been instructed to feed F.Z. every four hours using the feeding tube. However, DCS had learned that Mother had not been feeding F.Z. with the feeding tube and had missed F.Z.'s medical follow-up appointment. The amended petitions also alleged that before F.Z.'s recent hospital admission, F.Z. had not been taken to a physician in nearly two years. In addition, the amended petitions alleged that at the time of removal, four-year-old E.Z. was not potty-trained and had limited speech. The amended petitions further alleged that the family's only source of income was F.Z.'s Social Security Disability Income.

- [7] Also in March 2020, Mother admitted that the Children were CHINS. Mother also agreed to participate in a substance abuse assessment and other recommended services, which included supervised visits with the Children.
- [8] Following the agreed disposition, in March 2020, DCS referred Mother to a substance abuse assessment, which Mother did not attend. In September 2020, DCS referred Mother to another substance abuse assessment. However, Mother failed to sign releases of information that would have allowed the assessor to schedule the assessment.
- [9] From March 2020 until October 2020, Mother attended eleven of twenty-five scheduled in-person visits with the Children. During one of the visits in July 2020, Mother attempted to feed F.Z. pizza, which F.Z. was not allowed to eat because of her feeding tube. When the visitation supervisors attempted to intervene, Mother became very argumentative with them. Mother attended

“some” virtual visits beginning in October 2020. (Tr. Vol. 2 at 36). In December 2020, the visitation provider discharged Mother from supervised visits because she had violated the provider’s attendance policy by failing to attend four of four scheduled visits.

[10] The following month, January 2021, Mother asked DCS for a referral to substance abuse treatment. DCS referred Mother to a detox program, which Mother completed. However, following the completion of the detox program, Mother refused to attend a recommended substance abuse treatment program. Mother specifically told DCS that her substance abuse issues were “under control” following detox. (Tr. Vol. 2 at 42).

[11] In March 2021, DCS filed petitions to terminate Mother’s parental relationships with the Children. In mid-May 2021, Mother requested another referral for detox services and told DCS that she had been the victim of domestic violence. Mother also requested visitation with the Children. DCS referred Mother to both a detox program and a domestic violence shelter. Mother, however, did not respond to either provider’s attempts to contact her. DCS also scheduled a visit between Mother and the Children, which Mother failed to attend.

[12] At the end of May 2021, Mother failed to appear at the previously scheduled termination factfinding hearing. After unsuccessfully attempting to contact Mother by telephone, the trial court continued the factfinding hearing. In July 2021, Mother told DCS that she had moved to Mississippi.

- [13] Although Mother was aware that the termination factfinding hearing had been rescheduled to August 2021, Mother failed to attend it. Mother’s counsel told the trial court that the last time that he had attempted to telephone Mother, it appeared that Mother had blocked his telephone number. The trial court held the hearing in Mother’s absence and heard the evidence as set forth above.
- [14] The testimony at the factfinding hearing further revealed that Mother had not seen or visited with the Children in eight months. A.Z., B.Z., and E.Z. had been living with their foster family for over a year. The plan for A.Z., B.Z., and E.Z. was foster parent adoption. F.Z. had been placed with a separate foster family because of her medical condition. The plan for F.Z. was also foster parent adoption.
- [15] In addition, CASA Mary Jo Eckstein (“CASA Eckstein”) testified that “[w]ith everything [A.Z., B.Z., and E.Z.] ha[d] been through, [she was] surprised with how well they ha[d] survived[.]” (Tr. Vol. 2 at 49). According to CASA Eckstein, A.Z., B.Z., and E.Z. were very happy in their foster home. Regarding F.Z., CASA Eckstein testified that the child had previously been nonverbal but that she would now smile and say hi. According to CASA Eckstein, F.Z.’s foster mother is a nurse who had previously adopted a child with medical needs. CASA Eckstein also testified that termination and adoption was in F.Z.’s best interests and that she was “in agreement with the plan for termination of the parents’ rights and adoption by both sets of foster parents.” (Tr. Vol. 2 at 53).

[16] In August 2021, the trial court issued an order terminating Mother's parental relationships with the Children. In this order, the trial concluded that DCS had met its burden to prove by clear and convincing evidence that there was a reasonable probability that the conditions that had resulted in the Children's removal or the reasons for placement outside the home would not be remedied and that termination was in the Children's best interests.

[17] Mother now appeals the termination of the parental-relationships with the Children.

Decision

[18] The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*.

However, a trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *Id.* at 1188. Termination of the parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

[19] Before an involuntary termination of parental rights may occur, DCS is required to allege and prove, 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. v. Indiana Department of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[20] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[21] Mother's sole argument is that DCS failed to prove by clear and convincing evidence that the termination was in the Children's best interests. In determining whether a termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re*

D.D., 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parent to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial court need not wait until the child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *K.T.K.*, 989 N.E.2d at 1235. A child's need for permanency is a central consideration in determining the child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009).

[22] In addition, a parent's historical inability to provide a suitable environment coupled with a current inability to provide the same will support a finding that termination of parental rights is in the best interests of the children. *Lang v. Starke County Office of Family and Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*. Also, a parent's failure to exercise the right to visit her children demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship." *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). Moreover, this Court has previously held that the recommendations of the service providers, in addition to evidence that there was a reasonable probability that the conditions that had resulted in the children's removal would not be remedied, is sufficient to show clear and convincing evidence that termination is in the children's best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[23] Here, our review of the evidence reveals that Mother's drug use and domestic violence issues had historically rendered her unable to provide the Children with a suitable environment and had rendered her unable to provide the same at the time of the termination hearing. Specifically, just three months before the termination hearing, Mother had requested detox services and had told DCS that she had again been the victim of domestic. Although DCS referred Mother to a detox program and a domestic violence shelter, Mother did not respond to either provider's attempts to contact her. We further note that Mother failed to both take calls from her attorney and attend the termination hearing. In addition, Mother's last known place of residence was in Mississippi.

[24] Also, Mother inconsistently visited the Children during the course of the proceedings. In December 2020, the visitation provider discharged Mother from supervised visits because she had violated the provider's attendance policy by failing to attend four of four scheduled visits. At the time of the termination hearing, Mother had not seen or visited with the Children in eight months. Moreover, CASA Eckstein testified that termination was in F.Z.'s best interests and that she was in agreement with the plan of termination and foster care adoption for all four children. Lastly, the trial court concluded that DCS had proved by clear and convincing evidence that there was a reasonable probability that the conditions that had resulted in the Children's removal would not be remedied, and Mother does not challenge this conclusion. The totality of this evidence supports the trial court's conclusion that termination was in the Children's best interests.

[25] We reverse a termination of parental rights “only upon a showing of ‘clear error’—that which leaves us with a definite and firm conviction that a mistake has been made.” *Egly v. Blackford County Department of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

[26] Affirmed.

May, J., and Brown, J., concur.