

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
C.F. and L.F. (minor children)
and K.F. (Mother)

K.F. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

July 10, 2023

Court of Appeals Case No.
22A-JT-3107

Appeal from the
Madison Circuit Court

The Honorable
Stephen K. Koester, Judge

Trial Court Cause Nos.
48C02-2208-JT-108
48C02-2208-JT-109

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

[1] K.F. (“Mother”) appeals the termination of her parental rights. We affirm.

Facts and Procedural History

[2] Mother is the biological mother of C.F., born in May 2015, and L.F., born in March 2017. J.F., the children’s biological father, died in 2019. In early February 2020, the Department of Child Services (DCS) received reports that Mother was using illegal substances while caring for the children, then five and two. On February 12, Mother tested positive for methamphetamine, and the children were removed from the home. A few days later, DCS filed petitions alleging the children were in need of services (CHINS). The children were placed with various relatives, and by May both were placed with their paternal grandmother, where they have since remained. In September, the trial court found the children to be CHINS. In the dispositional order, Mother was ordered to, among other things, keep appointments with DCS and service providers, not use or sell illegal substances, submit to drug screens, and complete a substance-abuse assessment and any recommended treatment.

[3] For the next two years, Mother partially complied with the dispositional order. She regularly attended supervised visitation with the children, which went well, and no concerns were noted about her behavior or parenting. However, she refused to submit the required drug screens, missing 36 screens and over 150

check-in calls, the purpose of which was to inform her of whether she needed to screen. In November 2021, she was arrested and charged with Level 2 felony dealing in methamphetamine along with several misdemeanors. In January 2022, Mother submitted a drug screen that was positive for methamphetamine. The CHINS court ordered her to attend inpatient rehabilitation. Mother completed thirty days of inpatient treatment in May but did not complete the recommended follow-up treatment and refused to consistently submit drug screens. She did submit screens in July, August, and September, all of which were positive for methamphetamine.

[4] In August, DCS petitioned to terminate Mother's parental rights, and a termination hearing was set for the end of October. About a month before the termination hearing, Mother sent DCS a request for production, essentially requesting all documentation DCS had on the children and Mother. DCS provided responses to some requests, including documents from the CHINS cases, notes, service referrals, drug-screen results, and contact logs. DCS moved to quash the remaining requests, arguing they were overly burdensome, duplicative of documents Mother already received, or available to Mother by other means. The trial court agreed and granted the motion to quash.

[5] The termination hearing was held in October 2022. Mother orally moved to continue the hearing, citing in part that four of her subpoenaed witnesses had not shown up. The trial court denied the motion. At the hearing, DCS introduced several documents from the underlying CHINS records, including the dispositional order, CHINS petitions, chronological case summaries,

toxicology reports, and permanency reports. *See* Exs. 1-15, 17-22. Over Mother's objection, the trial court admitted the evidence. Later, Mother similarly introduced a CHINS progress report, which was admitted over DCS's objection. *See* Ex. A.

[6] At the hearing, Family Case Manager (FCM) John West testified it is in the children's best interests for parental rights to be terminated. Katherine Childers, the children's court-appointed special advocate (CASA), also testified that termination is in the children's best interests, citing Mother's lack of progress on her sobriety and the children's need for permanency. The children's paternal grandmother, with whom they reside, testified that she was willing to adopt them and that the children's maternal grandparents also helped care for and support them.

[7] Mother testified that she used methamphetamine as recently as a month or two before the termination hearing. She confirmed that in May she completed inpatient treatment to address her substance abuse but had not yet started the recommended follow-up treatment. Mother also stated she had pending criminal charges relating to dealing in illegal substances and was working with the police department and prosecutor's office to conduct controlled buys in exchange for the dismissal of those charges.¹

¹ Notwithstanding this testimony, the Odyssey Case Management System shows that in March 2023 Mother pled guilty to Level 2 felony dealing in methamphetamine as well as three misdemeanors. She received an aggregate sentence of seventeen-and-a-half years. Her projected release date is April 2034.

[8] Following the hearing, the trial court issued an order terminating Mother's rights to both children.

[9] Mother now appeals.

Discussion and Decision

I. Due Process

[10] Mother argues the trial court violated her due-process rights when it denied her oral motion to continue based on her absent witnesses and incomplete discovery.² The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. *Id.*

[11] “Due process requires ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The Indiana Supreme Court has held that “the process due in a termination of parental rights action turns on

² Mother also argues her due-process rights were violated during the CHINS proceedings because the trial court did not hold enough hearings and DCS failed to submit a case plan to the court. But Mother did not raise these issues in the trial court, nor does she now argue fundamental error. As such, she has waived this claim for our review. *See In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001).

balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *Id.* (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). Because both a parent’s and the State’s countervailing interests are substantial, when faced with a claim of denial of due process in a termination-of-parental-rights case, we focus on the second factor, the risk of error created by the State’s chosen procedure. *In re C.G.*, 954 N.E.2d at 917-18.

[12] Mother first argues her due-process rights were violated when the court failed to grant her a continuance based on the absence of some of her witnesses. But Mother failed to submit an affidavit identifying those witnesses and what their anticipated testimony would have been, both of which are requirements to receive a continuance based on an absent witness. *See* Ind. Trial Rule 53.3 (motion to continue a trial based on the absence of a witness requires the submission of an affidavit stating, among other things, the identity of the witness and the facts the witness may prove); *In re K.W.*, 178 N.E.3d 1199, 1208 (Ind. Ct. App. 2021) (applying Trial Rule 53.5 to CHINS proceeding). Nor does she tell us this information on appeal. As such, we cannot say the risk of error in continuing without these witnesses was high.

[13] Mother also argues that she was not provided “complete discovery” and that this violates her due-process rights. Appellant’s Br. p. 18. The only piece of discovery Mother identifies that she did not receive is “service provider reports.” *Id.* But again, she does not tell us who these service providers are or

what type of information she seeks. Mother, as the recipient of these services, should at least be able to identify the service providers and how their reports might help her defense. Without this information, it is difficult to determine how she was prejudiced. Furthermore, as DCS noted at the discovery hearing, Mother could access these reports herself via third-party discovery. As such, the risk of error here seems low, and we cannot say DCS's failure to provide her with these reports violates due process.

[14] Mother has not demonstrated that the trial court violated her due-process rights.

II. Sufficiency of Evidence

[15] Mother next argues the evidence presented at the hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[16] A petition to terminate parental rights 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). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

A. Findings of Fact

[17] Mother challenges Findings 3, 5, 7, 9, 11-13, 18, 25, 29, and 30. Findings are clearly erroneous only when the record contains no evidence to support them, either directly or by inference. *L.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. We first note that for many of these findings, Mother's complaint appears to be that the evidence supporting the finding came from the underlying CHINS records. But these records were

admitted into evidence at the termination hearing, and Mother does not challenge their admission on appeal.

[18] Mother challenges Finding 3, which states in part, “The children became involved with the Department when they were detained from Mother’s care on February 12, 2020” Appellant’s App. Vol. II p. 11. Mother argues there is no evidence the children were removed on that specific date. But both the chronological case summaries and the CHINS petitions reflect that the children were removed on February 12, 2020. *See* Exs. 1-4. Furthermore, the children’s maternal grandmother testified that the children were removed in February 2020. *See* Tr. Vol. II p. 243. Finding 5 states, “On September 16, 2020, the CHINS court entered its previously withheld ruling, finding the children to be in need of services as alleged.” Appellant’s App. Vol. II p. 12. Mother takes issue with the “as alleged” phrasing here, seeming to argue it means the court found all the allegations in the CHINS petition to be true. We take the court’s finding to mean DCS alleged the children to be CHINS and the trial court found them as such, not that the court found all specific allegations to be true. As such, we see no error.

[19] Finding 7 provides:

[Mother] has failed to comply with the dispositional orders, including those to (a) Keep all appointments with any service provider, DCS or CASA, GAL; (b) Complete a substance abuse assessment and follow all treatments and successfully complete all treatment recommendations; (c) Submit to random drug screens; (d) Engage in an individual counseling program referred

by the Family Case Manager and actively participate to the extent recommended by the provider and DCS; and demonstrate positive changes in her life as a result of the counseling.

Id. We see no error here. Mother herself testified that she did not complete the recommended follow-up substance-abuse treatment. Mother was required to consistently call in to DCS to see if a random drug screen would be needed that day, yet DCS records show Mother missed over 150 of these required calls and failed to submit 36 drug screens. *See* Ex. 21. Furthermore, the CHINS records, some of which Mother introduced into evidence at the hearing, show Mother's noncompliance with drug treatment, drug screens, and individual counseling. *See* Ex. A.

[20] Finding 9 states in part: "Current placement is paternal grandmother [B.F.]" Appellant's App. Vol. II p. 12. Mother argues B.F. is not the current "court ordered placement" because DCS, without a court order, placed the children there. Appellant's Br. p. 16. But the finding doesn't say "court ordered placement," it says "current placement," which is B.F.

[21] Mother challenges Findings 11-13, which state:

11. Underlying CHINS court orders, which the Court finds to be persuasive, indicate that Mother consistently failed to fully engage, or at times even to participate at all, in services offered without cost to her to enhance her parenting skills to better parent [C.F.] and [L.F.].

12. Beginning in January 2021, service providers cancelled work with [Mother] based on missing or unconfirmed appointments,

including one or more supervised visit providers, substance abuse treatment programs, homebased case work provider and random drug screen provider.

13. Acknowledging the lack of progress toward reunification, the underlying court on July 13, 2022, approved a permanency plan that included a concurrent plan of adoption.

Appellant's App. Vol. II p. 12. Again, the CHINS records support these findings. *See* Ex. 10 (January 2021 periodic case review noting multiple service providers had unsuccessfully discharged Mother due to noncompliance); Ex. 13 (July 2022 Order Approving New Permanency Plan).

[22] Mother then challenges Finding 18, "Mother attended 30 day inpatient treatment at Tara Treatment Center, being discharged at the end of May, 2022," and Finding 25, "Mother has not yet begun Phase Two of her VOA treatment program, which was recommended by VOA and DCS." Appellant's App. Vol. II pp. 12-13. Mother's testimony provides support for both these findings, as she stated that she "discharged" from inpatient treatment in May 2022 and had not yet started the recommended follow-up. *See* Tr. Vol. I p. 177.

[23] Finally, Mother challenges Findings 29-30, which provide:

29. CASA Childers' staffed recommendation is termination of Mother's parental rights, noting that Mother has not made significant progress for the children to return to her care in the more than two years they've been placed outside the home. CASA Childers opined that it was not in the best interests for the children to be in their mother's care, due to Mother's instability and lack of sobriety.

30. The children need permanency at this juncture. To further delay permanency for the children so that Mother, at some unknown point in future, can demonstrate what she has not in the last 2-1/2 years—that she can provide the children with a safe and stable home and with a sober caregiver that can meet their individual needs would cause harm to the children.

Appellant’s App. Vol. II p. 13. Mother does not identify what she believes is erroneous in these findings. CASA Childers’s testimony, in which she recommended termination, noted Mother’s lack of progress, and emphasized the children’s need for permanency, supports both these findings.

[24] Mother has failed to show that these findings are clearly erroneous.

B. Conclusions of Law

1. Conditions Remedied

[25] Mother next challenges the trial court’s conclusion that there is a reasonable probability the conditions resulting in the children’s removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child’s removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must determine what conditions led to the child’s placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[26] Here, the children were removed from Mother's home due to her substance abuse. And for over two years, Mother failed to show any progress in addressing this issue. She consistently refused to submit drug screens with DCS, and often the screens she did submit were positive for methamphetamine. She completed inpatient treatment to address her substance abuse but tested positive afterward and refused follow-up treatment. She admitted using methamphetamine within a few months of the termination hearing and tested positive in the months leading up to the hearing. Furthermore, during the CHINS case she was arrested for Level 2 felony dealing in methamphetamine, and those charges were pending at the time of the termination trial.

[27] The trial court did not err when it concluded there is a reasonable probability the conditions leading to the children's removal will not be remedied.

2. Best Interests

[28] Mother also challenges the trial court's conclusion that termination is in the children's best interests. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or 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.* We have held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *In re L.S.*, 987 N.E.2d at 1158.

[29] Here, both FCM West and CASA Childers recommended that Mother’s parental rights be terminated. And as noted above, Mother has not shown an ability to provide a safe and stable environment for the children. While this evidence alone is sufficient, permanency is also a central consideration. The children, now eight and six, have been removed from Mother’s care for over three years. The children have resided with their paternal grandmother for most of this time, and she wishes to adopt them. While living with the grandmother, the children have maintained relationships with their maternal grandparents and extended family.

[30] For these reasons, we conclude that the totality of the evidence supports the trial court’s determination that termination of Mother’s parental rights is in the children’s best interests.

[31] Affirmed.

Mathias, J., and Pyle, J., concur.