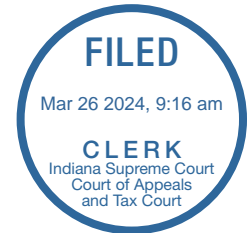


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

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

and

A.K. (Mother),
Appellant-Respondent

v.

Indiana Department of Child Services,
Appellee-Petitioner

March 26, 2024

Court of Appeals Case No.
23A-JT-2201

Appeal from the Carroll Superior Court
The Honorable Troy M. Hawkins, Judge

Trial Court Cause Nos.
08D01-2304-JT-1
08D01-2304-JT-2

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] A.K. (“Mother”) appeals the involuntary termination of her parental rights to two of her children: L.K. and K.K. (collectively, “Children”). Mother raises one issue for our review, which we restate as: was the trial court’s termination of Mother’s parental rights to L.K. and K.K. clearly erroneous? Concluding it was not, we affirm.

Facts and Procedural History

- [2] Mother and R.K. (“Father”) are the biological parents of L.K., born in April 2010, and K.K., born in July 2013.¹ L.K. was first adjudicated a child in need of services (“CHINS”) in October 2010 due to Mother’s substance abuse and domestic violence in the home. Since then, Children have been adjudicated CHINS on three separate occasions.
- [3] In fall 2017, the Indiana Department of Child Services (“DCS”) alleged Children were CHINS because of Mother’s substance abuse, neglect, and

¹ Besides L.K. and K.K., Mother has three other biological children. Mother’s parental rights to her other three children are not at issue in this case.

domestic violence between Mother and Father. A few days after DCS filed its petition, Father passed away from a drug overdose. Around this time, Mother tested positive for methamphetamine. Although Mother participated in most of her therapeutic services and remained sober throughout the life of the case, she was resistant to domestic violence classes. DCS recommended Mother follow up regarding domestic violence classes, even after the CHINS case was closed in August 2018.

[4] About a year later, DCS received multiple reports of domestic violence involving Mother and her new boyfriend, Cody. DCS helped Mother create a safety plan and obtain a protective order against Cody. But the reports of domestic violence did not stop, and Mother and Cody were uncooperative with DCS. DCS then filed an in-home CHINS petition and Children were adjudicated as such in January 2020. The Family Case Manager (“FCM”) at the time considered Mother “very loving and affectionate to her children,” but unable to provide a safe and stable environment for Children. *Tr. Vol. 2* at 15.

[5] Around nine months later, Children were once again removed from Mother’s home. Like before, DCS removed Children due to Mother’s substance abuse—including a positive drug screen—and domestic violence. Mother was hesitant about starting services but eventually participated in therapy, medication management, and supervised visits. Mother did not, however, participate in the recommended domestic violence class. Still, the case was closed in spring 2021.

- [6] DCS received another report of domestic violence involving Mother in September 2021. Even though DCS substantiated the allegations, it did not initiate another CHINS proceeding because Mother followed the safety plan and was still taking Children to services. The safety plan was updated, and DCS recommended Mother adhere to the protective order and start services for herself.
- [7] A few months later, another report was filed alleging domestic violence and suspected drug use. When DCS personnel and law enforcement officers arrived at the home to investigate, Mother was uncooperative and refused to let them inside. After obtaining a court order, DCS proceeded with their investigation. As part of the investigation, DCS interviewed Children and determined Mother and Cody were living together in the home and often argued.
- [8] An in-home CHINS petition was filed but Children were removed from the home on January 28, 2022, after Mother tested positive for methamphetamine and amphetamine. Mother admitted to the allegations and Children were adjudicated as CHINS in March 2022. Mother was ordered to, among other things, refrain from using alcohol or illegal substances; submit to random drug screens; maintain contact with DCS and other service providers; complete parenting and substance abuse assessments; complete a parenting assessment and follow all recommendations; not commit any acts of domestic violence; adhere to the protective order against Cody; prevent Cody from having contact with Children; and conduct herself in a civil and respectful manner when engaging with DCS and service providers.

[9] Mother’s participation in services and behavior toward her providers was poor, at best. Mother’s providers described her attitude as “combative,” “hostile,” “extremely belligerent,” and “reactive and aggressive.” *Id.* at 99, 101, 138, 149. Additionally, Mother sent one of her visitation supervisors threatening messages and would text her “nonstop day and night,” sometimes sending about “40 texts in five to ten minutes.” *Id.* at 115. Mother conducted herself so poorly she was eventually discharged by some of her service providers.² Mother also harassed Children’s foster parents. Children were relocated four to five times before being placed with their paternal aunt in Texas.

[10] Mother’s participation in random drug screening was inconsistent. Although she had some negative drug screens, Mother continued to test positive for methamphetamine and amphetamine. The FCM explained Mother “would go periods of time when she would be compliant, and then she would stop, especially if there was a . . . positive, or if she knew she was going to test positive, she would stop.” *Id.* at 153.

[11] In April 2023, DCS petitioned to terminate Mother’s parental relationships with Children. At a fact-finding hearing a couple of months later, Mother appeared by Zoom. Although the hearing started around nine o’clock that morning, Mother called in about six hours later. Mother was “not properly dressed in attire appropriate for a courtroom.” *Id.* at 162. After a brief recess—during

² Mother’s noncompliance with services and failure to adhere to the protective order in place was so severe, the trial court held her in contempt, and she was incarcerated for about a week.

which Mother changed into more appropriate clothing—the hearing resumed. Soon after, Mother interrupted: “Can I just sign my rights over, so we don’t have to go through this?” *Id.* at 165. The trial court explained the hearing was almost complete, so they were going to finish it. Mother immediately disconnected from the hearing and did not return. The trial court terminated Mother’s parental rights to Children that same day.

Standard of Review

- [12] In a proceeding to terminate parental rights, the trial court must enter findings of fact that support its conclusions. Ind. Code § 31-35-2-8(c). “We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly support the judgment.” *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016) (quoting *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014)). Trial court findings not challenged on appeal must be accepted as true. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).
- [13] Out of deference to the trial court’s unique position to assess the evidence, we will affirm the termination of parental rights unless the trial court’s judgment is clearly erroneous. *In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019), *cert. denied*. A termination decision is clearly erroneous “when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision.” *Id.* We neither reweigh evidence nor judge witness credibility. *Id.* And we consider only the evidence and reasonable inferences that support the trial court’s judgment. *Id.*

Clear and Convincing Evidence Supports the Trial Court’s Conclusion That Termination is in Children’s Best Interests

- [14] Parents have a fundamental right to raise their children. *Id.* This right, however, is not absolute and may be terminated when parents are unwilling to meet their parental responsibilities. *Id.* at 45–46. “The purpose of terminating parental rights is not to punish parents, but to protect the children.” *In re I.B.*, 933 N.E.2d 1264, 1270 (Ind. 2010) (quoting *Egley v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)).
- [15] But because parental rights are “an important interest warranting deference and protection, and a termination of that interest is a ‘unique kind of deprivation,’” Indiana law sets a high bar to sever the parent-child relationship. *In re C.G.*, 954 N.E.2d 910, 916–17 (Ind. 2011) (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981)). To do so, DCS must prove four elements by clear and convincing evidence. *See* I.C. § 31-35-2-4(b)(2) (2019); I.C. § 31-37-14-2 (1997). One such element—the only element Mother challenges on appeal—requires DCS to prove “termination is in the best interests of the child.” I.C. § 31-35-2-4(b)(2)(C). The trial court determined DCS met its burden on this element. Mother contends otherwise.
- [16] When deciding whether termination is in the child’s best interest, trial courts “must look at the totality of the evidence and, in doing so, subordinate the parents’ interests to those of the children.” *Ma.H.*, 134 N.E.3d at 49. The children’s need for permanency is a central concern. *Id.* “Indeed, ‘children cannot wait indefinitely for their parents to work toward preservation or

reunification.’” *Id.* (quoting *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014)). And courts “need not wait until the child is irreversibly harmed such that the child’s physical, mental and social development is permanently impaired before terminating the parent-child relationship.” *E.M.*, 4 N.E.3d at 648 (quoting *In re K.T.K.*, 989 N.E.2d 1225, 1235 (Ind. 2013)).

[17] Because Mother does not challenge the trial court’s findings on appeal, we accept the following findings as true: Mother has a history of substance abuse, alcohol abuse, and domestic violence; Mother has not addressed her substance abuse problems and tested positive for methamphetamine; Mother has failed to cooperate with DCS and multiple service providers, often acting abusive and aggressive toward the providers; Mother has continually placed her needs above the needs of Children; and Children are safe and happy with their paternal aunt in Texas. Even so, Mother contends the trial court clearly erred because termination of her parental rights is not in Children’s best interests. We disagree.

[18] In essence, Mother wants more time to regain sobriety and stability in her life. Yet she has squandered ample opportunities to do. Not only has Mother inconsistently engaged in recommended services, but she frequently acted so aggressively toward her providers that some of them discharged her. Additionally, Mother has not participated in domestic violence classes and repeatedly violated a protective order by contacting, and at times living with, Cody. Mother’s efforts to address her substance abuse problems have not fared much better. When Mother did submit drug screens, she sometimes tested

positive for methamphetamine and amphetamine, suggesting her substance abuse issues persist. Ultimately, Children need not wait indefinitely for Mother to take the necessary steps to maintain her parental relationship with them. *See Ma.H.*, 134 N.E.3d at 49.

[19] Furthermore, Mother’s behavior at the fact-finding hearing is telling. After joining the hearing hours after it began, Mother asked to sign away her rights. When the trial court denied her request, she quickly disconnected from the hearing and did not return. In sum, the trial court’s unchallenged findings support its judgment that termination is in Children’s best interests.³ The trial court therefore did not clearly err.

Conclusion

[20] The trial court’s determination that terminating Mother’s parental rights was in Children’s best interests was not clearly erroneous.

[21] Affirmed.

May, J., and Vaidik, J., concur.

ATTORNEY FOR APPELLANT

Michael B. Troemel
Lafayette, Indiana

³ To the extent Mother argues the evidence concerning Children’s most recent placement with an aunt in Texas is “far more speculative than it is clear and convincing,” she asks us to reweigh evidence. *Appellant’s Br.* at 14. This is a task we cannot do. *See In re Ma.H.*, 134 N.E.3d at 45.

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Marjorie Lawyer-Smith
Indianapolis, Indiana