

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Laura A. Raiman
R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of T.G.T. (Minor
Child)

and

J.F. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

August 31, 2021

Court of Appeals Case No.
21A-JT-621

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly Benjamin,
Judge

The Honorable Lindsey Holden-
Kay, Magistrate

Trial Court Cause No.
03C01-2007-JT-3650

Crone, Judge.

Case Summary

- [1] J.F. (Mother) appeals the trial court's order involuntarily terminating her parental rights to her child T.G.T. (Child). She argues that the trial court clearly erred in concluding that termination is in Child's best interests. Finding no error, we affirm.

Facts and Procedural History

- [2] The unchallenged findings show that Child was born in July 2012.¹ Mother left Child in the care of a friend with a temporary guardianship from 2012 to 2014, during parts of 2014, and from 2015 to 2016. In 2016, Mother married Child's stepfather (Stepfather), and they had two daughters, who are Child's younger siblings.
- [3] In March 2018, the Indiana Department of Child Services (DCS) investigated a report that Child had marks and bruises. Child told DCS that Stepfather had hit him with a wooden spoon and a belt. Child had three marks on the top of his hand/wrist and a red mark on his butt/lower back. Mother and Stepfather "made excuses by stating that [Child] had behavior issues that were difficult to manage." Appealed Order at 2. Mother and Stepfather agreed to participate in an informal adjustment program to address parenting skills and home conditions and to complete psychological evaluations.

¹ Child's biological father has not been a part of Child's life and has no bond with Child. He signed a consent to adoption in June 2020.

[4] Jeannie Overton provided Mother and Stepfather with home-based case management. While Overton was at the home, she observed that Mother rarely left the couch, spent long periods of the day sleeping, seemed unable to manage the home environment with three children, and expected Child to take care of his two younger sisters. *Id.* at 12. When Stepfather was present, he was the one who appeared to be the children’s primary caregiver. *Id.* Overton also was concerned that Mother went from job to job. *Id.* Overton’s biggest concern “was the lack of bond between Mother and [Child].” *Id.* Mother did not like to have Child near her and did not like touching him. Although Mother would hold the girls, she would tell Child to go away and physically push him away. *Id.* Overton explained to Mother that it was normal for a parent to hold a child and give the child love and affection, but Mother said that “she just couldn’t do it” with Child. *Id.* Overton coached Mother on how to manage Child’s behavior, but “Mother never showed any growth in this aspect” and was never able to consistently apply discipline. *Id.*

[5] In July 2018, Mother completed a psychological evaluation with Dr. Linda McIntire, who diagnosed Mother with borderline personality disorder and found that Mother also suffered from episodes of depression. *Id.* at 8. As explained by Dr. McIntire, “a person diagnosed with [b]orderline [p]ersonality [d]isorder has difficulty maintaining attachment, difficulty with basic functioning and providing for themselves, and significant interpersonal issues such as not being able to keep employment.” *Id.* Mother perceived herself as “mentally ill and not able to function.” *Id.* Mother also reported a “concerning

level of aggression,” and Mother’s scores on three tests administered by Dr. McIntire indicated a high risk of causing child abuse. *Id.*

[6] In December 2018, DCS received a new report that Child had suffered physical abuse. Child had marks and bruises to his face and lip, and Mother told DCS that Stepfather had “back-handed” Child. *Id.* at 3. DCS terminated the informal adjustment, removed Child from the home, and filed a petition alleging that Child was a child in need of services (CHINS). The trial court found Child to be a CHINS based on Mother’s and Stepfather’s admissions that they struggled to find appropriate and effective means of disciplining Child, who had been diagnosed that year with attention deficit disorder.

[7] In March 2019, the trial court issued a disposition order, requiring that Mother and Stepfather complete home-based case management, individual therapy, family therapy, and supervised visitation. In June 2019, the trial court authorized Child’s return to Mother’s home for a trial visit. By this time, Child was receiving cognitive behavioral therapy after having been most recently diagnosed with attention deficit hyperactivity disorder and post-traumatic stress disorder. Melanie Hargis supervised home visits between Mother and Child. Hargis observed that the home was very dirty and cluttered, that Mother never interacted positively with Child, and that Mother used Child to take care of his siblings. *Id.* at 13.

[8] In September 2019, for the third time since DCS became involved, Child suffered physical injuries, this time consisting of a bruise on his forehead and

bruising on the back of his head and his left ear. Mother and Stepfather stated that the injuries were caused by a fall from the bed, but a doctor found that the bruising to Child's ear was not consistent with a fall and appeared to be inflicted and non-accidental. Although Child reported that he fell from the bed, "he was avoidant in answering certain specific questions about [his] injuries, particularly as to his ear." *Id.* at 6. "Mother later admitted to her case manager that Stepfather had smacked [Child] in the face but minimized the seriousness of the incident." *Id.* at 12. The trial court terminated the trial home visit, and Child was placed in foster care, where he remained.

[9] After Child's removal from Mother's care, Mother and Stepfather were evicted from their home. Mother and Stepfather separated, and Mother moved in with her aunt in Avon. Stepfather and the girls moved in with his parents. Hargis supervised Mother's visits with Child at a fast food restaurant and observed that Mother rarely showed any affection toward Child and spent most of the time on her cell phone. *Id.* at 13. Hargis spoke to Mother about it, but Mother failed to modify her behavior.

[10] In December 2019, family case manager (FCM) Lauren Wilson was assigned to Child's case. At a child and family team meeting (CFTM) in January 2020, FCM Wilson and other members of Mother's team spoke to Mother about helping her move to Columbus to be closer to Child and to intensify services, but Mother declined the offer. Mother then moved in with her mother in South Bend. Child's grandmother's home was not an appropriate place for Child

because grandmother's own children, including Mother, had been removed from her care. *Id.* at 17.

[11] At a March 2020 status conference, the trial court found that Mother had made little progress in her services and changed the primary permanency plan to adoption with a concurrent plan of reunification with Mother. In South Bend, a new group of providers stepped in to assist Mother. Eddy Gervis began supervising Mother's visits with Child and driving her to Shelbyville once a week to pick up Child for a three-hour visit at a store or a restaurant. Also, Michelle Gibson began individual therapy with Mother, and Pepper Linn provided casework services.

[12] In July 2020, DCS filed a petition for the involuntary termination of Mother's parental rights. Overton, who had provided home-based services during the informal adjustment, had begun individual therapy with Child in April 2020. Part of Child's therapy included phone calls with Mother, but Child was resistant to talking to Mother; he would say that he did not want to talk to Mother and run away. In October 2020, the trial court ordered the phone calls to cease due to the negative impact it had on Child and his therapy. After this, Child made significant progress in his therapy.

[13] In January 2021, a termination hearing was held. Witnesses included Dr. McIntire, Overton, Hargis, FCM Wilson, guardian ad litem (GAL) Jill Swain, Gibson, Gervis, and Linn. On March 12, 2021, the trial court issued a twenty-page order terminating Mother's parental rights, which provides as follows:

12. While Ms. Gibson testified that Mother is making progress in her emotional regulation, identifying her role in conflict, being aware of how she is feeling, and using appropriate coping skills, Ms. Gibson also notes frequently in her monthly reports that Mother has pretty low insight into why she continues to be involved with DCS; struggles with taking personal responsibility for how she contributes to her low mood.

13. It was also noted by Ms. Gibson in her monthly reports that Mother frequently lost or changed jobs due to issues getting along with her co-workers and struggles with emotional regulation. As recent as October and November 2020, Mother was still struggling with chronic fatigue during the day, which is affecting her mood and ability to function throughout the day. Mother also disclosed in November 2020 that she still has moments of “snapping” on her mom, had been recently suspended from work for refusing to sign a write up, and continues to struggl[e] communicating with DCS.

14. Ms. Gibson further testified that in [their] sessions Mother still denied that [Child] had experienced physical abuse in her home. Mother does not take any responsibility for the role she has played in [Child’s] continued removal from the home.

....

41. Mr. Gervis reports that [Child] and Mother have grown closer together.

42. However, Mr. Gervis has not been able to observe Mother in a home-like setting with [Child]. Mr. Gervis also reports that Mother has not taken any steps that he is aware of to utilize her family supports to get to Shelbyville for additional visits with [Child].

43. Ms. Linn testified that Mother struggles with her interpersonal skills but that she does not appear to go long periods without employment. However, Ms. Linn acknowledged that Mother has been unable to maintain a consistent job for any period and that she is on her fifth job. Ms. Linn acknowledges that Mother has left or been fired because the “manager didn’t like her” or she “didn’t get along with other employee[s].” Ms. Linn has talked with Mother about the physical abuse but Mother had denied the physical abuse and states that it never happened. Ms. Linn has only witnessed one visit, which was the Monday prior to this trial. Ms. Linn has positive reports and believes that there is a bond between [Child] and Mother.

44. Despite the positive reports from Mother’s current providers, the providers have had very little observation or interaction with Mother and [Child] together in a natural environment. Mother has failed to obtain housing that would be appropriate for her and [Child] since relocating to South Bend. She has been unable to maintain employment for any length of time. She continues to struggle with her emotional regulation and interpersonal skills across multiple settings.

....

49. Ms. Overton stated that she does believe that [Child] and Mother have a bond but that it is more a friendship bond and not a mother/child bond. Ms. Overton does not see that [Child] recognizes Mother as a motherly figure or as someone who takes care of his welfare. Ms. Overton has seen [Child] make more progress since phone calls were ended. [Child] has expressed that he still wants to live with his mother but when Ms. Overton talked to him about visits maybe being affected after today’s hearing he said to Ms. Overton, “I don’t care.”

50. Ms. Overton has attended CFTMs since returning to the case in April 2020. When comparing Mother from 2018 to now, Ms. Overton sees that Mother is in a very similar situation as to when Mother started services. Ms. Overton identifies that Mother is not in a stable living situation, she has not maintained employment, she does not have the ability to sustain herself and therefore is unable to care for her child.

51. Ms. Overton firmly believes that it is in [Child's] best interest for parental rights of Mother to be terminated and for [Child] to be adopted. Ms. Overton supports her conclusion based on Mother's inability to show that she can put [Child's] needs above her own, provide a consistent and stable environment for [Child], or that she can utilize positive discipline.

....

58. DCS believes it is in the best interests of the Child to be adopted[.] Since [FCM Wilson took] the case, Mother has made no progress in establishing stable employment, appropriate housing where [Child] could return, and has continued to be inconsistent about her relationship with [Stepfather]. FCM Wilson has regular Child and Family Team Meetings where these issues are discussed, plans are developed, and Mother fails to follow through.

....

60. Another concern for the Court is that until today, Mother has never acknowledged the physical abuse endured by [Child] while in Mother's home. Mother failed to be a protective factor for [Child] and she refused to even acknowledge that the physical abuse occurred.

61. Further, Mother has not shown the growth and progress necessary in her bond with [Child]. Since the beginning of this case, Mother and [Child] have had little to no parent-child bond. Still to date, Mother and [Child's] bond has been described as a friendship bond and not a parent-child bond. Mother herself has expressed throughout the case that she struggled to bond with [Child] and exhibited that through physically pushing him away.

....

63. [GAL Swain] testified that it would be in [Child]'s best interest to be adopted and for Mother's parental rights to be terminated. In support of [her] assertion, GAL [Swain] ... does not see the progress necessary in developing a parent-child bond or attachment with [Child], that [Mother] has not appropriately acknowledged the trauma [Child] suffered from the physical abuse, and that Mother has made little to no effort in establishing a nurturing, stable, living environment for [Child].

....

66. Further, Mother has repeatedly demonstrated that she is unable or unwilling to put [Child's] needs above her own. Mother would point fingers at [Child] for his bad behavior despite Mother not engaging in the techniques that she was being taught to decrease his behaviors. Mother would not accept redirection from providers in these situations and refused to implement the tools she was given.

Appealed Order at 8-10, 14-20 (citations omitted). The trial court concluded that DCS had proven by clear and convincing evidence that there is a reasonable probability that continuation of the parent-child relationship poses a threat to Child's well-being, termination is in Child's best interests, and there is

a satisfactory plan for Child post-termination, which is adoption. This appeal ensued.

Discussion and Decision

[14] Mother seeks reversal of the termination of her parental rights. In considering her appeal, we recognize that “a parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (quoting *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). “[A]lthough parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.” *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008). Involuntary termination of parental rights is the most extreme sanction, and therefore “termination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.*

[15] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

In considering whether the termination of parental rights is appropriate, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and any reasonable inferences therefrom that support the judgment, and give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. Where a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous. [Ind. Trial

Rule 52(A)]. In evaluating whether the trial court's decision to terminate parental rights is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment.

K.T.K. v. Ind. Dep't of Child Servs., 989 N.E.2d 1225, 1229-30 (Ind. 2013) (citations and quotation marks omitted). We further note that Mother seems to challenge only two of the trial court's findings. When findings of fact are unchallenged, this Court accepts them as true. *S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). As such, if the unchallenged findings clearly and convincingly support the judgment, we will affirm. *Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015), *trans. denied*; *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*.

[16] A petition to terminate a parent-child relationship 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) (emphasis added). DCS must prove each element by “clear and convincing evidence.” *R.S.*, 56 N.E.3d at 629; Ind. Code § 31-37-14-2. DCS need only prove one of the options listed under subsection 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[17] Here, Mother challenges the trial court’s conclusion that termination is in Child’s best interests. To the extent that she challenges the trial court’s conclusion that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to Child’s well-being, it is within the best interests context. To determine whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. Termination of parental rights is not appropriate solely because there is a better home available for the child. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). However, in assessing a child’s best interests, the trial court “must subordinate the interests of the parents to those of the child.” *A.D.S.*, 987 N.E.2d at 1158. “[C]hildren cannot wait indefinitely for their parent to work toward preservation or reunification—and courts ‘need not

wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship.'" *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1235). "Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." *K.T.K.*, 989 N.E.2d at 1230 (quoting *Bester*, 839 N.E.2d at 148). Also, "[p]ermanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009).

[18] Mother acknowledges that FCM Wilson and GAL Swain, as well as Overton, all opined that termination of the parent-child relationship is in Child's best interests. Mother also recognizes that the recommendation of the case manager and child advocate to terminate parental rights, in addition to evidence of the parent's unfitness, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *See A.D.S.*, 987 N.E.2d at 1158-59 ("[A] recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence that 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 A.P.*, 981 N.E.2d 75, 84 (Ind. Ct. App. 2012) (concluding that trial court did not err in finding that termination was in children's best interests where testimony of case manager and child advocate that termination was in children's best interests

was supported by evidence of father's continuing pattern of neglect towards children). However, Mother asserts that the trial court clearly erred in crediting the opinions of FCM Wilson and GAL Swain that termination is in Child's best interests and in dismissing the testimony of Mother's current service providers. In addition, Mother apparently challenges finding 61, contending that the trial court clearly erred in finding that she "had made no progress in her services."² Appellant's Br. at 22.

[19] Turning first to Mother's challenge to finding 61, we observe that the trial court found that Mother had "not shown the growth and progress necessary in her bond" with Child, that since the beginning of the case, Mother and Child had little to no parent-child bond, and that the bond they had just recently developed had been described as a friendship bond rather than a parent-child bond. Appealed Order at 17. Mother argues that "the claim that [she] had not made sufficient progress was not consistent with the only witnesses who witnessed Mother's current progress." Appellant's Br. at 22. In support, Mother directs us to the positive testimony of Gibson, Gervis, and Linn.

[20] We note that the trial court recognized that Gibson testified that Mother is making progress in her emotional regulation, but also found that Gibson had frequently noted that Mother had minimal insight into why she is involved with DCS and struggles with taking personal responsibility. Appealed Order at 9 (#

² Mother also challenges finding 59, but we need not address that argument because the remaining findings support the judgment.

12). Significantly, Gervis testified that Mother still denied that Child suffered physical abuse and “does not take any responsibility for the role she has played” in Child’s continued removal from the home. *Id.* (#14). Also, Gibson noted that as recently as November 2020, Mother had been suspended from work for refusing to sign a write up, had issues with getting along with coworkers, and still had moments of “snapping” on her mom. *Id.* (#13).

[21] As for Gervis’s testimony, although the trial court acknowledged his positive testimony that Mother and Child had grown closer together, the court found that Gervis had not been able to observe Mother in a home-like setting with Child and that Mother had not taken any steps to utilize family support to get to Shelbyville for additional visits with Child. *Id.* at 14 (#41, 42). In addition, the trial court found that although Linn believed that there is a bond between Mother and Child, Linn had only witnessed one visit between them. *Id.* (#43). Furthermore, Overton, Child’s current therapist, described Mother’s bond with child as a friendship bond rather than a parent-child bond. Both Overton and FCM Wilson testified that Mother had made little or no progress through services. *Id.* at 15, 17 (#50, 58).

[22] We note that while a trial court must “judge the parent’s fitness to care for [the] child as of the time of the termination proceedings, taking into consideration evidence of changed conditions,” the court “should consider the parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation assess.” *A.P.*, 981 N.E.2d at 84. The trial court recognized the positive reports from Mother’s current providers but

found that they had very little observation or interaction with Mother and Child together in a natural environment. Appealed Order at 14 (#44). Mother's argument is merely a request to reweigh the evidence, which we must decline. We conclude that the evidence clearly and convincingly supports the trial court's finding that Mother has not shown the growth and progress necessary in her bond with Child.

[23] In addition to finding that Mother had not made sufficient progress in establishing a parent-child bond, the trial court found that Mother had repeatedly demonstrated that she is unable or unwilling to put Child's needs above her own. *Id.* at 18 (#66). The trial court also found that Mother had failed to obtain housing that would be appropriate for her and Child, had been unable to maintain employment for any length of time, and continued to struggle with her emotional regulation and interpersonal skills across multiple settings. *Id.* at 14 (#44). These findings clearly and convincingly support the trial court's finding that there is a reasonable probability that the parent-child relationship poses a threat to Child's well-being.

[24] The trial court's findings also support the reasons that FCM Wilson and GAL Swain gave for their opinions that termination is in Child's best interests. FCM Wilson's opinion was based on her concern that Mother was unable to maintain stable employment or establish appropriate housing for Child. *Id.* at 17 (#58). GAL Swain's opinion was based on Mother's lack of progress in developing a parent-child bond with Child, Mother's failure to acknowledge the trauma Child suffered from the physical abuse, and that Mother had made little

to no effort in establishing nurturing, stable, living environment for Child. *Id.* at 17-18 (#63). Their opinions that termination is in Child's best interests and the findings discussed above clearly and convincingly support the trial court's conclusion that termination is in Child's best interests. Accordingly, we affirm the involuntary termination of Mother's parental rights to Child.

[25] Affirmed.

Bailey, J., and Pyle, J., concur.