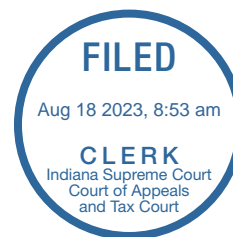


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
A.W. and I.D. (Minor Children);

C.W. (Mother),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

August 18, 2023

Court of Appeals Case No.
23A-JT-150

Appeal from the Madison Circuit
Court

The Honorable Angela Warner
Sims, Special Judge

Trial Court Cause Nos.
48C02-2203-JT-32
48C02-2203-JT-34

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] In this consolidated appeal, C.W. (“Mother”) appeals the termination of the parent-child relationship with her two daughters, A.W. (“A.W.”) and I.D. (“I.D.”). Mother argues that: (1) the Department of Child Services (“DCS”) violated her due process rights because it failed to make reasonable efforts to preserve the parent-child relationships; and (2) there is insufficient evidence to support the terminations. Concluding that: (1) DCS did not violate Mother’s due process rights; and (2) there is sufficient evidence to support the terminations, we affirm the trial court’s judgment.¹

[2] We affirm.

Issues

1. Whether DCS violated Mother’s due process rights.
2. Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

[3] The facts most favorable to the termination reveal that Mother is the parent of A.W., who was born in February 2015, and I.D., who was born in June 2018,

¹ A.W.’s father voluntarily relinquished his parental rights and consented to A.W.’s adoption. DCS dismissed I.D.’s father from the case because it was unable to serve him. DCS subsequently refiled the termination case regarding I.D.’s father under a different cause number. Neither father is participating in this appeal.

(collectively “the children”). In October 2018, DCS removed the children from Mother’s home after four-month-old I.D. arrived at the hospital emergency room with burns on her face and torso, and Mother had no plausible explanation for how the burns had occurred. In addition, a DCS family case manager subsequently observed that the condition of Mother’s home was “filthy, unsanitary, deplorable and . . . unsafe” for the children. (App. Vol. 2 at 177).

[4] DCS filed petitions alleging that the children were children in need of services (“CHINS”) in October 2018, and Mother admitted that the children were CHINS. In November 2018, the trial court entered CHINS dispositional orders that required Mother to: (1) participate in individual counseling and follow all recommendations; (2) visit with the children on a regular basis; (3) complete a substance abuse assessment and follow all recommendations; (4) cooperate with home-based services; (5) successfully complete parenting classes; (6) obtain and maintain adequate housing; and (7) maintain consistent contact with DCS.

[5] Following a periodic review hearing in March 2019, the trial court found that Mother had been participating in supervised visits with the children and home-based case work. However, by December 2019, Mother’s participation in services, including supervised visitation and home-based case work, had become inconsistent. Two service providers had discharged Mother from services. When service providers discharged Mother, DCS re-referred Mother for those same services. Mother’s participation in services remained inconsistent throughout 2020. However, in 2021, three years after the children

had been removed from her home, Mother began more consistently participating in services.

- [6] In August 2021, DCS filed a motion for approval of a trial home visit, which the trial court granted. However, during the course of the trial home visit, Mother became overwhelmed with caring for the children, took A.W. to Mother's sister's house, and asked the sister to take care of A.W. In addition, during the course of the trial home visit, Mother was involved in a domestic violence incident with her significant other, resulting in the significant other asking Mother to leave their home.
- [7] After the trial home visit had been terminated, the DCS family case manager re-referred Mother for further services, including supervised visitation and home-based case services. However, Mother stopped communicating with DCS. She never asked about the children or attempted to re-establish visitation with them, and she never participated in any services. In March 2022, DCS filed petitions to terminate Mother's parental relationships with the children.
- [8] The trial court heard the facts as set forth above at the August 2022 termination hearing, which Mother failed to attend. Also, at the hearing, Family Case Manager Supervisor Brianna Greenlee ("FCM Supervisor Greenlee") testified that over the course of the previous four years, Mother had "never really stuck with anything or finished any service[.]" (Tr. Vol. 32-33). In addition, according to FCM Supervisor Greenlee, Mother had not seen the children or maintained contact with DCS since the termination of the trial home visit in

November 2021. FCM Supervisor Greenlee recommended the termination of Mother's parental rights. Specifically, she explained as follows:

Mo[ther] has had four years to work with us to take advantage of the services we're able to offer. [Y]ou know four years is a long time. I think both of these kids deserve permanency. That's [I.D.]'s entire life. [T]he girls are together in a good home, and I just think that they deserve permanency.

(Tr. Vol. 2 at 40-41). FCM Supervisor Greenlee further testified that the plan for the children was foster parent adoption. CASA Ashley Smalley ("CASA Smalley") also recommended the termination of Mother's parental rights so that the children "finally receive[d] the permanency that they deserve[d]." (Tr. Vol. 2 at 58).

[9] Following the hearing, in December 2022, the trial court issued orders terminating Mother's parental relationships with the children. Mother now appeals.

Decision

[10] Mother argues that: (1) DCS violated her due process rights because it failed to make reasonable efforts to preserve the parent-child relationships; and (2) there is insufficient evidence to support the terminations. We address each of her contentions in turn.

1. Due Process

[11] Mother first argues that DCS failed to make reasonable efforts to preserve the parent-child relationships, resulting in a violation of her due process rights.

When DCS seeks to terminate parental rights, “it must do so in a manner that meets the requirements of due process.” *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015) (cleaned up). Whether due process has been afforded in termination proceedings is determined by balancing the following “three distinct factors” specified in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): (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. *A.P. v. Porter County Office of Family and Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*.

[12] DCS must “make reasonable efforts to preserve and reunify families[.]” IND. CODE § 31-34-21-5.5(b). In addition, “due process protections at all stages of CHINS proceedings are vital because every CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.” *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (cleaned up). “[T]hese two proceedings - CHINS and TPR - are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter[.]” *Id.*

[13] However, the “failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009); *see also In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (“[T]he provision of family services is not a requisite element of our parental rights termination statute, and thus, even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal.”). Further, a parent may not sit idly by

without asserting a need or desire for services and then successfully argue that she was denied services to assist her with her parenting. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000).

[14] Here, Mother argues that DCS violated her due process rights because it failed to make reasonable efforts to preserve the parent-child relationships. Mother specifically contends that DCS failed to offer her services following the termination of the trial home visit in November 2021. However, Mother has waived appellate review of this claim because she raises it for the first time on appeal. *See In re K.S.*, 750 N.E.2d 832, 834 n.1 (Ind. Ct. App. 2001) (explaining that a mother waived her constitutional claim that the trial court had violated her due process rights because she raised claim for the first time on appeal).

[15] Waiver notwithstanding, our review of the record reveals that DCS offered Mother home-based case services and supervised visitation following the termination of the trial home visit. Mother chose not to participate in these services, never inquired about the children's well-being, and failed to maintain contact with DCS following the termination of the trial home visit. Mother has failed to establish that her due process rights were violated.²

² In addition, Mother cites *A.P.*, 734 N.E.2d at 1107, in support of her argument that DCS engaged in conduct that affected her ability to participate in and complete services aimed at reunifying her with the children. In *A.P.*, we concluded that the parents' due process rights had been violated in a termination proceeding where DCS had made multiple procedural errors, such as failing to provide parents with copies of case plans and filing CHINS and termination petitions that did not meet statutory requirements. *Id.* at 1117. No such procedural errors occurred in this case, and DCS did not engage in conduct that affected Mother's ability to participate in and complete services. Rather, Mother chose not to participate in and complete services.

2. Sufficiency of the Evidence

[16] Mother also argues that there is insufficient evidence to support the termination of her parental relationships with the children. 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 child 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.*

[17] 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).

[18] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re Involuntary Termination of Parent-Child Relationship of 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.

[19] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). "This deference recognizes a trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record." *Id.*

[20] Here, Mother first argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the

home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to the children's well-being.

[21] However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not be remedied.

[22] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires a trial court to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to

the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring a trial court to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *E.M.*, 4 N.E.3d at 643.

[23] Here, our review of the evidence reveals that DCS removed the children from Mother's home because of her inability to provide them with a safe environment. During the course of the following four years, Mother failed to successfully complete any services. Further, at the time of the August 2022 termination hearing, Mother had not had contact with DCS or the children since the November 2021 termination of the trial home visit. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not be remedied.

[24] Mother also argues that there is insufficient evidence that the terminations were in the children's best interests. In determining whether termination of parental rights is in the children's best interests, the trial court is required to look at the totality of the evidence. *In re Termination of Parent-Child Relationship of 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 children involved. *Id.* In addition, a child's need for permanency is a central consideration in determining that child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding

that termination is in the children's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[25] Here, our review of the evidence reveals that at the time of the termination hearing, the children had been out of Mother's home for four years. Both FCM Supervisor Greenlee and CASA Smalley recommended the termination of Mother's parental rights because the children deserved permanency. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the children's best interests.

[26] Concluding that DCS did not violate Mother's due process rights and that there is sufficient evidence to support the terminations, we affirm the trial court's termination of the parent-child relationships.

[27] Affirmed.

Vaidik, J., and Mathias, J., concur.