

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:

K.M., Jr. (*Minor Child*),

and

K.L.M. (*Mother*),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

July 26, 2021

Court of Appeals Case No.
21A-JT-37

Appeal from the Tippecanoe
Superior Court

The Honorable Faith Graham,
Judge

Trial Court Cause No.
79D03-2009-JT-60

Robb, Judge.

Case Summary and Issue

- [1] K.L.M. (“Mother”) appeals the termination of her parental rights to her minor child and raises a single issue: whether the juvenile court’s order terminating her parental rights was clearly erroneous. Concluding it was not, we affirm.

Facts and Procedural History

- [2] Mother has nine children, one of whom is the subject of this appeal: K.M., born July 28, 2019 (“Child”). C.C. is Child’s alleged father.¹
- [3] On July 29, 2019, the day after Child’s birth, the Tippecanoe County Department of Child Services (“DCS”) received a report alleging Child was a victim of neglect due to allegations that she was born positive for marijuana and methamphetamine.
- [4] The next day, DCS conducted a visit with Mother at the hospital during which Mother admitted to regularly using marijuana and occasionally drinking alcohol during her pregnancy. Mother denied using amphetamine. When asked about ceasing her drug use and obtaining treatment, Mother indicated that she did not have plans to stop using but would, if necessary. Mother also submitted to an oral drug screen, which yielded positive results for marijuana, amphetamine, and methamphetamine. Child was underweight at birth and was

¹ C.C.’s parental rights were also involuntarily terminated; however, he does not participate in this appeal. Therefore, we have limited our recitation of the facts to those pertaining to Mother except as necessary.

admitted into the neonatal intensive care unit. After Mother was released and while Child was still in the hospital, Mother rarely visited. On August 1, DCS met with Mother at her home; Child had not yet been discharged from the hospital. Mother lacked essential supplies for the baby, including food, diapers, clothing, and bottles, as well as a plan for childcare. In fact, Mother indicated she had to work later that night.

- [5] Child was discharged from the hospital on August 6 and was removed from Mother's care and placed in relative care. On August 7, DCS filed a petition alleging Child was a child in need of services ("CHINS") due to Mother's substance abuse and Child testing positive for illicit substances. An initial/detention hearing was held the same day. Court appointed special advocate ("CASA"), Austin Reed, was assigned the case.
- [6] Sometime in August, DCS referred Mother to Counseling Partners for substance abuse and mental health assessments; PAKT² for visitation; and Redwood Toxicology for random drug screens. The next month, Mother completed the substance abuse assessment, which recommended individual counseling, an intensive outpatient treatment program ("IOP"), visitation, and random drug screens. Around the same time, Mother was referred to individual therapy; however, after an initial session, Mother was discharged for non-compliance. And in November, Mother was referred to Bauer the Living

² Only the acronym for this service provider appeared in the record.

in Balance Program for IOP but she failed to attend. She was subsequently referred to IOP at Valley Oaks, which could provide individual sessions.

- [7] From August to December, Mother attended all visits with Child. She was prepared for each visit and often arrived early and the visits progressed from the office to her home and from supervised to unsupervised. Mother also submitted to twenty-five urine drug screens during this time, eighteen of which were positive for alcohol and THC; she also submitted to four oral drug screens, all of which were positive for THC.
- [8] The juvenile court adjudicated Child a CHINS on December 9. Following a hearing, the juvenile court issued its dispositional decree ordering Mother to (among other things): maintain contact with DCS; complete mental health and substance abuse assessments and follow all recommendations; complete intensive outpatient treatment; participate in individual therapy and follow recommendations; refrain from consuming alcohol or illicit substances; submit to random drug screens; and attend all court proceedings and visitation with Child. *See Exhibits, Volume 1 at 49-50.*
- [9] In January 2020, DCS contacted PAKT and was informed that Mother had been discharged from services that month due to lack of communication and non-compliance with available visitation times offered. DCS sought another service provider for Mother. The following month, DCS put in another referral for Mother's visitation to resume through Counseling Partners, but Mother did not respond to their outreach and was discharged for failing to engage.

[10] Mother informed DCS in March that she no longer wished to engage in services and was ready to sign a consent for adoption of Child. In an April CASA report, Reed informed the court that “[a]ll attempts to meet with [M]other have been unsuccessful. Child is doing well. . . . Mother needs to go to an [IOP] and pass her drug screenings for at least a month. Mother states that her drug use is not a problem in relation to caring for an infant.” *Id.* at 87.

[11] In May, the case was transferred to family case manager (“FCM”) Aliesha Walker. Walker attempted to make contact with Mother via letters, text messages, and phone calls to no avail. The same month, Mother gave birth to her ninth child, who also tested positive for illicit substances, prompting DCS to become involved with Mother’s other seven children.

[12] On July 6, another review hearing was held, and Mother failed to appear.³ The juvenile court subsequently issued an order finding that Mother recently tested positive for methamphetamine and had not visited Child since December 2019 and suspending Mother’s visitation. The order provided that “[a]ny party can file a motion to resume visitation if the Mother submits to a drug screen free from methamphetamine and Fentanyl.” *Id.* at 66. The court also found:

DCS also reports there is an open assessment as Mother gave birth to a new child in May. Mother, baby, and one of the six other children in the home tested positive for methamphetamine. There are also delinquency petitions pending against two of the

³ Due to the COVID-19 pandemic, the hearing was held via Zoom.

other children. . . . DCS is planning to file an in home CHINS regarding the seven children still in Mother's care.

Id. at 66-67.

[13] Mother tested positive for amphetamine, methamphetamine, alcohol, and THC on July 17 and 20, 2020. Walker was eventually able to make contact with Mother sometime in July. A permanency hearing was held in August at which Mother appeared. The juvenile court changed Child's permanency plan from reunification to adoption. Around the same time, Mother decided to participate in individual therapy once again and DCS put in another referral. DCS also put in another referral for a substance abuse assessment at Valley Oaks for Mother, which recommended she participate in an addiction counseling group. Mother failed to engage.

[14] On September 1, DCS filed its petition for the involuntary termination of Mother's parental rights as to Child. In October, Mother refused to communicate with FCM Walker and communicated only with a supervisor; she stated she did not want to be reunified with Child.

[15] In a November 2020 report, CASA Reed reported that Child was doing well, and he had spoken to Mother multiple times on the phone but had not met her face-to-face. Reed also informed the court that Mother was willing to move forward with adoption and wants Child to be adopted by his current placement. *Id.* at 93. Reed recommended that Mother's parental rights be terminated and that Child be adopted by her current placement. *Id.* at 92. His report

concluded, “Mother is not involved with this case. Adoption is now the end goal. Both placement and [M]other agree to adoption, moving towards hearing for termination of parental rights.” *Id.* at 93.

[16] Following a fact-finding hearing held on December 8, at which Mother failed to appear, the juvenile court issued an order terminating Mother’s parental rights and finding, in relevant part:

9. Mother reported an arrest for dealing heroin when she was fifteen (15) years old resulting in placement in juvenile detention for ten (10) months. As an adult, Mother has been arrested for and/or charged with Resisting Law Enforcement, Battery on Law Enforcement Officer, Public Intoxication, and Disorderly Conduct (2013) as well as Operating a Vehicle While Never Receiving a License, Operating a Vehicle While Intoxicated, Disorderly Conduct, and Driving While Suspended (2016). Mother was convicted of Operating While Intoxicated and Disorderly Conduct in 2017. Mother violated probation in 2018 by failing to complete a drug/alcohol evaluation, failing to complete ninety (90) days of Smart Start monitoring, and failing to pay probation fees. Mother was charged with Operating a Vehicle as a Habitual Traffic Violator on March 3, 2020 and again on August 17, 2020, both of which remain pending.

10. Mother completed a mental health assessment on September 7, 2019. It was recommended that Mother complete a substance use assessment, participate in individual therapy, submit to random drug screens, and attend supervised parenting time.

11. Mother completed a substance use assessment on September 24, 2019. Mother began using alcohol and marijuana at fifteen (15) years of age. Mother used one (1) or two (2) blunts

daily until reducing to every other day once DCS became involved. . . . It was recommended that Mother participate in an intensive outpatient treatment program, individual counseling, and random drug screens. Mother completed a second substance use assessment in October 2020. It was recommended that Mother participate in group counseling.

12. Mother failed to complete [IOP]. Mother was discharged from individual therapy after continued attempts to schedule were unsuccessful. Mother failed to attend group counseling.

13. Mother submitted to forty-two (42) drug screens throughout the CHINS case. Mother tested positive on thirty-six (36) of those drug screens for substances including alcohol, marijuana, amphetamine, and methamphetamine. Mother's most recent methamphetamine positive test was collected on [October 5, 2020].

* * *

Conclusions of Law

1. There is a reasonable probability the conditions that resulted in removal of [Child] from the care of [Mother] or the reasons for continued placement outside the home will not be remedied. [Mother] has [not] demonstrated the ability or willingness to make lasting changes necessary to provide adequately for [Child]. The circumstances at the time of adjudication continue to exist today.

2. Continuation of the parent-child relationship[] poses a threat to the well-being of [Child] who needs stability in life. [Child] needs parents with whom she can form a permanent and lasting bond to provide for her emotional and psychological as

well as physical well-being. [Mother has] essentially abandoned [Child].

3. DCS has a satisfactory plan of adoption for the care and treatment of [Child] and there is reason to believe an appropriate permanent home has or can be found.

4. For the foregoing reasons, it is in the best interests of [Child] that the parental rights of [Mother] be terminated.

Appealed Order at 3-4. Mother now appeals.

Discussion and Decision

I. Standard of Review

[17] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). But the law also provides for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). Although we acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotations omitted). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to

their children. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. As such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating parental rights is to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[18] When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In deference to the juvenile court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). Thus, if the evidence and inferences support the decision, we must affirm. *Id.*

[19] When terminating parental rights, the juvenile court must enter findings and conclusions, Ind. Code § 31-35-2-8(c), and we therefore apply a two-tiered standard of review, *Bester*, 839 N.E.2d at 147. We first determine whether the evidence supports the findings, then determine whether the findings support the judgment. *Id.* We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is

clearly erroneous only if the findings do not support the court's conclusions or the conclusions do not support the judgment thereon. *Id.*

II. Statutory Framework for Termination

[20] Indiana Code section 31-35-2-4(b)(2) sets forth the elements that DCS must allege and prove to terminate a parent-child relationship, in pertinent part:

(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 [CHINS];

(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.

[21] DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2. If the juvenile court finds the allegations are true, "the court shall terminate the parent-child relationship." Ind. Code § 31-35-2-8(a).

III. Termination of Mother's Parental Rights

- [22] We begin by noting that Mother does not challenge any of the juvenile court's findings; therefore, we accept the findings as true. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied*. Instead, Mother only challenges the juvenile court's conclusion that termination is in Child's best interests.
- [23] "Permanency is a central consideration in determining the best interests of a child." *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). To determine the best interests of children, the juvenile court looks to the totality of the evidence and must subordinate the interests of the parents to those of the child. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. The juvenile court need not wait until a child is irreversibly harmed before terminating parental rights. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). Testimony of the service providers may support a finding that termination is in the child's best interests. *In re S.K.*, 124 N.E.3d 1225, 1234 (Ind. Ct. App. 2019), *trans. denied*.
- [24] Here, Mother has failed to remedy the very condition that led to Child's removal and continued placement outside of her care, namely her substance abuse. Since the inception of this case, Mother submitted to forty-two drug screens, thirty-six of which were positive for either alcohol, THC, amphetamine, and methamphetamine or a combination thereof. At the fact-finding hearing, FCM Walker testified that Mother has not remedied this condition and that Mother does not even acknowledge her addiction. Walker

testified, “[Mother] says that she likes to drink and smoke weed and that . . . she doesn’t use meth. But, when we show her that her positive screens for methamphetamines, she denies the use.” Transcript, Volume 2 at 21.

Unfortunately, Mother has made no progress toward sobriety. Although she completed a substance abuse assessment, she failed to follow through with treatment and consistently engage in services. Instead, she continued to actively use drugs during this case.

[25] This court has held that recommendations of the FCM and CASA, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child’s best interest. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. Here, Mother does not challenge the juvenile court’s conclusion that there is a reasonable probability the conditions resulting in Child’s removal will not be remedied and Walker and Reed both recommended termination of Mother’s parental rights.

[26] Walker testified that Mother failed to demonstrate “any interest in [Child] as far as not coming to court, not advocating for her” and opined that termination was in Child’s best interests because Mother is unable to “provide a safe, stable home for this child that is free from drug use or stability for her.” Tr., Vol. 2 at 21. Reed also recommended termination of Mother’s rights and adoption of Child by her current placement. See Exhibits, Vol. 1 at 92.

[27] Child is doing well and thriving in her current placement. She needs the stability and permanency Mother has demonstrated she is unable to provide. Based on the totality of the circumstances, we conclude DCS has proven by clear and convincing evidence that termination of Mother's parental rights is in Child's best interests.⁴

Conclusion

[28] We conclude DCS presented sufficient evidence to support the juvenile court's order terminating Mother's parental rights to Child. Therefore, the order was not clearly erroneous, and the judgment of the juvenile court is affirmed.

[29] Affirmed.

Bailey, J., and May, J., concur.

⁴ Although not raised by either party, we note that the juvenile court's order states that Mother "has failed to appear despite proper notice. Court hears evidence and enters default judgment." Appealed Order at 1. The fact that the juvenile court characterized its order as a default judgment does not make it so. Because evidence was presented, the juvenile court actually rendered a judgment on the merits despite its finding of default. *Young v. Elkhart Cnty. Off. of Fam. & Child.*, 704 N.E.2d 1065, 1069 (Ind. Ct. App. 1999) ("Had [DCS] presented any evidence to support the termination of her parental rights, the judgment, regardless of what the court called it, would actually have been a judgment on the merits[.]"). Therefore, to the extent the order could be construed as an erroneous default judgment, it is not.