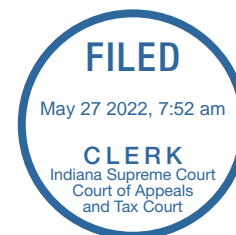


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

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

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Monika Prekopa Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

T.R. (*Minor Child*),

and

S.R. (*Mother*),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

May 27, 2022

Court of Appeals Case No.
21A-JT-2610

Appeal from the Ripley Circuit Court

The Honorable Ryan J. King,
Judge

Trial Court Cause No.
69C01-2102-JT-5

Robb, Judge.

Case Summary and Issue

- [1] S.R. (“Mother”) and A.R. (“Father”) (collectively, “Parents”) are the parents of T.R. (“Child”). In early 2018, the Child was adjudicated a child in need of services (“CHINS”) and in February 2021, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Parents’ parental rights. On October 26, 2021, the juvenile court issued an order making findings and concluding Parents’ parental rights should be terminated. Mother now individually appeals, raising one issue which we restate as whether sufficient evidence supported the termination of Mother’s parental rights. Concluding that clear and convincing evidence supports the termination, we affirm.

Facts and Procedural History

- [2] In May 2017, Parents were living with their two children, P.R. and K.R.,¹ in the home of Mother’s parents (collectively, “Grandparents”).² At that time, DCS received a report that the home was not in a livable condition. Additionally, it was reported that there was marijuana and drug paraphernalia in the home. DCS visited the home and observed that drug paraphernalia and animal feces were within reach of P.R. and K.R. DCS drug tested Parents and Grandparents. Parents and one of the Grandparents tested positive for marijuana. As a result, DCS entered into an informal adjustment with Parents and Grandparents.
- [3] In August 2017, the Child was born and tested positive for THC. The informal adjustment was then expanded to include the Child. As part of the informal adjustment, DCS continued to drug screen Parents and Mother continued to test positive for THC. During this time period, Mother also admitted to purchasing aerosol canisters of air duster that she inhaled to get high. In early January 2018, Mother tested positive for THC, morphine, and fentanyl. Accordingly, DCS filed a petition alleging the Child to be a CHINS³ and the juvenile court ordered Mother to be removed from the home.⁴
- [4] In February 2018, Parents entered an admission, and the juvenile court adjudicated the Child to be a CHINS. A dispositional hearing was held and the juvenile court ordered Parents, among other things, to: contact the family case manager (“FCM”) every week to allow the FCM to monitor compliance with the CHINS proceedings; keep all appointments with service providers, DCS, or Court Appointed Special Advocate (“CASA”); not use or consume any illegal controlled substances and only take prescription medications for which a valid and current prescription exists; not consume alcohol; and obey the law. Mother was also ordered to notify the FCM of any arrests or criminal charges and submit to random drug screens. The permanency plan was reunification.

¹ The Child was not yet born.

² Grandparents were the legal guardians of P.R. and K.R.

³ P.R. and K.R. were not included in the CHINS petition.

⁴ The Child remained in the Grandparents’ home with Father.

- [5] Following the dispositional hearing, Parents were relatively compliant with the Child's case plan. Father was participating in individual counseling and testing negative on drug screens. Similarly, Mother was testing negative on her drug screens and although she was inconsistent in her attendance, she began an intensive outpatient substance abuse program in February 2018. As a result, Mother was approved for trial home visits with the Child. However, in June 2018, police were called to the home in response to a domestic violence incident between Parents. Specifically, Mother had punched Father in the face and attempted to harm herself with a razor and pills. When police arrived at the home, Mother fled to a wooded area to avoid capture. Accordingly, home visits were discontinued.
- [6] After June 2018, Mother did not maintain consistent contact with DCS. Further, Mother did not visit regularly with the Child or participate in drug screens. She also refused treatment for her substance abuse and mental health issues, including panic disorder, PTSD, and a cannabis related disorder. During this time period, Mother's home-based services were placed on hold due to lack of participation. Meanwhile, Father was sporadically participating in therapy and tested positive on a drug screen.
- [7] In September 2018, Mother was arrested for violation of probation and incarcerated for several weeks. Subsequently, Parents remained noncompliant with the CHINS proceeding. Neither parent engaged in services and their communication with DCS and CASA was poor. Mother failed to graduate from the intensive outpatient substance abuse program she began in February 2018 and was discharged from the program, visited the Child infrequently, and failed to report for numerous drug screens.
- [8] In January 2019, DCS determined that the Grandparents' home was no longer suitable for the Child and he was removed from the home.⁵ At this time, Parents were incarcerated. In particular, Mother was in jail for another probation violation. At some point between January and March of 2019, Parents were released from their incarcerations. However, Parents' engagement in the case plan continued to be poor. Parents did not attend visits and the service was suspended due to missed and canceled appointments. Parents continued to test positive on drug screens. Specifically, Mother tested positive for THC, hydrocodone, oxycodone, and tramadol. Mother also failed to show for additional drug screens.
- [9] In April 2019, Mother was arrested for another probation violation. As she was being processed by the local jail, Mother was found hiding Xanax in her clothes, hair, and private parts. As a result of this incident, Mother pleaded guilty to obstruction of justice.
- [10] Throughout the remainder of 2019, Mother did not visit with the Child or participate in services due to her incarceration. During this time period, Mother briefly participated in a drug rehab program offered by the jail but was ultimately removed for failure to follow the program's rules. In January 2020, the permanency plan was changed to reunification with a concurrent plan for adoption.
- [11] Mother was released from jail in February 2020. However, Mother remained noncompliant with the Child's case plan. Mother did not maintain contact with DCS and continued to either miss drug screens or test positive for THC. In June 2020, Mother completed a thirty-

⁵ The Child was placed in foster care and has remained with the same placement family since his removal.

day inpatient drug rehab program. But upon release from the rehab program, Mother immediately went to a local Burger King and inhaled an aerosol canister of air duster in the restaurant's bathroom. Mother was found on the bathroom floor, unconscious and vomiting. Mother was arrested for violating her probation.

[12] In August of 2020, Mother was again released from jail. Upon her release, Mother's compliance showed some improvement: she completed the first half of a recommended psychological evaluation and participated in visits with the Child, although she was either late for or missed multiple visits. A visit supervisor indicated that when she was engaged in visits, Mother was a good, loving parent, but she was simply not stable enough to maintain her engagement. Mother also had several negative drug screens, but she missed additional drug screens which caused DCS to believe she was again struggling with sobriety. In November, Mother was arrested in Kentucky for a violation of probation for crimes Mother pleaded guilty to in 2016. Following her arrest, Mother was unable to participate in services and visits. At this time, the CASA reported that even when Mother had not been incarcerated, Mother was consistently noncompliant with the case plan and only sporadically involved in the Child's life.

[13] In February 2021, DCS filed a verified petition to involuntarily terminate Parents' parental rights. Subsequently, Father consented to termination and a fact-finding hearing was held as to Mother. At the hearing, DCS presented extensive evidence of Mother's noncompliance with the Child's case plan. Jennifer McCoy, the FCM from May 2017 through mid-2018, testified that although she believes Mother wants what is best for the Child, Mother made very little progress and her participation only got worse as the Child's case plan progressed. Kaitlin Lillie, the FCM from August 2018 through July 2020, testified that Mother's noncompliance was largely due to her inability to stay sober and out of legal trouble. Additional testimony echoed Lillie's sentiment in that although Mother had screened negative for thirty-one drug screens since the informal adjustment was first entered into, Mother had also screened positive for drugs on thirty-three separate occasions and had failed to show up for 133 other drug screens. Further, Mother's own testimony detailed her extensive criminal history, which included the theft of air dusters and obstruction of justice related to bringing Xanax into a jail. In total, Mother accrued seven additional criminal charges after the birth of the Child. She also detailed her numerous probation violations and incarcerations. Mother admitted that these actions all took place during the CHINS case. *See* Transcript of Evidence, Volume 2 at 15. Moreover, at the time of the fact-finding hearing, Mother remained incarcerated for her November 2020 arrest.

[14] Mother also testified that she believed she would be released to parole before July 2022, she would be able to better participate in the Child's case plan once she was released, and she was currently taking parenting classes and a moral recognition therapy course where she was working on decision making skills, life skills, and her substance abuse. However, Mother admitted that it was not guaranteed that she would be released in the coming months; even once she was released, she would need to reside in a half-way house; and she had not yet completed her coursework. Rebecca Woods, the FCM from August 2020 through March 2021, testified that Mother still needed to focus on providing for herself before she would be able to provide a "safe and stable home" for the Child. *Id.* at 86. The Child's foster mother testified that he was thriving in his current placement and that the family was willing to adopt the Child. She also articulated that Mother has only visited the Child approximately ten to

twelve times in the previous three years. The CASA and FCMs Woods, Lillie, and McCoy each stated that termination of Mother's parental rights was in the best interests of the Child.

- [15] On October 26, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Parents' parental rights. Mother now appeals.

Discussion and Decision

I. Standard of Review

- [16] The right of a parent to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1155 (Ind. Ct. App. 2013), *trans. denied*. Nevertheless, the law provides for termination of these constitutionally protected rights when parents are unable or unwilling to meet their parental responsibilities. *Id.* When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that support the judgment of the juvenile court. *Id.*
- [17] In deference to the juvenile court's opportunity to assess the evidence, we will not set aside its judgment terminating a parent-child relationship unless clearly erroneous. *A.D.S.*, 987 N.E.2d at 1156. When, as here, a judgment contains specific findings of fact and conclusions of law, we apply a two-tiered standard of review. *Id.* First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record contains no facts or inferences to support them. *Id.* A judgment is clearly erroneous when the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment. *In re A.S.*, 17 N.E.3d 994, 1002 (Ind. Ct. App. 2014), *trans. denied*.

II. Termination

- [18] To terminate a parent-child relationship, Indiana Code section 31-35-2-4(b)(2) provides DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * *

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least

fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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

* * *

(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.

[19] DCS must prove each element by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231; *see also* Ind. Code § 31-34-12-2. If the juvenile court finds that the allegations are true, the parent-child relationship shall be terminated. Ind. Code § 31-35-2-8(a).

[20] On appeal, Mother only challenges the juvenile court's conclusion that termination is in the best interests of the Child. In deciding to terminate the parent-child relationship, the juvenile court must look at the totality of the evidence and must subordinate the parents' interests to those of the child. *In re A.S.*, 17 N.E.3d at 1005. Ultimately, a child has a paramount need for permanency, which is a central consideration in determining a child's best interests. *In re E.M.*, 4 N.E.3d 636, 647-48 (Ind. 2014).

[21] In the present case, DCS has been involved with the Child since his birth in August 2017. During this time, Mother has committed multiple crimes, violated her probation, and been incarcerated for significant stretches of time. Mother argues that her numerous incarcerations have denied her the opportunity to "meaningfully participate" in the Child's case plan and therefore, termination is not in the Child's best interests. Appellant's Brief at 10. However, individuals who choose to pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with a child. *K.T.K.*, 989 N.E.2d at 1235-36. Due to her own choices, Mother continues to find herself in trouble with the legal system and has been repeatedly incarcerated. In fact, at the time of the termination hearing she was still incarcerated for a November 2020 arrest due to a probation violation and could not guarantee

when she would be released to parole. The record does not demonstrate that she was denied the opportunity to participate in the Child's case plan. Rather, Mother's inability to obey the law and pattern of incarcerations is indicative of a mother who is unable to provide the permanency needed by a child who has been in foster care for over three years.

[22] Moreover, even when Mother was not incarcerated, she was routinely noncompliant with the case plan and only sporadically involved in the Child's life. When not incarcerated, Mother had visits discontinued on multiple occasions, failed to maintain contact with DCS, and never addressed her substance abuse issues, failing to graduate from an intensive outpatient program as well as immediately overdosing following the completion of an inpatient rehab program. Further, she failed thirty-three drug screens and failed to show up for an additional 133 screens while not incarcerated. Failure when not incarcerated to meaningfully engage in the services designed to reunify her with the Child is also not reflective of an ability to provide the Child with permanency.

[23] Mother also argues that termination is not in the best interests of the Child because termination would "only serve to sever[] the Child from a [loving] and caring relationship[.]" Appellant's Br. at 17. Specifically, Mother argues she "was well bonded with the Child and demonstrated . . . [s]he was capable of being an appropriate and loving parent." *Id.* Although the evidence shows Mother wants what is best for the Child and that when engaged, she is a good parent, the record also demonstrates Mother was simply unable to maintain her engagement. Throughout the course of this case, Mother has been removed from the home, failed to attend many visits, and ultimately had visits suspended multiple times. Further, Mother has failed to address her substance abuse problems, routinely been incarcerated, and regularly discharged from recommended services. According to FCM Woods, Mother still needs to focus on herself and is unable to provide a "safe and stable home" for the Child. Tr., Vol. 2 at 86. Thus, we cannot say that Mother's relationship with the Child renders the juvenile court's determination that termination is in the Child's best interests erroneous.

[24] Finally, we note that testimony from the FCM and CASA combined with evidence that either there is a reasonable probability that the reasons for a child's removal will not likely be remedied or that a continued parent-child relationship is a threat to the child has regularly been used to support a juvenile court's determination that termination is in a child's best interests. See *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*; see also *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). Here, three FCMS and the CASA testified that termination of Mother's parental rights was in the best interests of the Child. Additionally, Mother concedes that sufficient evidence exists to support the juvenile court's determinations that there is a reasonable probability that the reasons for removal will not be remedied and that continuing her relationship with the Child poses a threat to the Child. See Appellant's Br. at 14-15. Therefore, the juvenile court did not err in determining that termination was in the Child's best interests.

Conclusion

[25] We conclude sufficient evidence showed that termination of Mother's parental rights is in the Child's best interests. Therefore, the juvenile court's decision was not clearly erroneous, and we affirm.

[26] Affirmed.

Pyle, J., and Weissmann, J., concur.