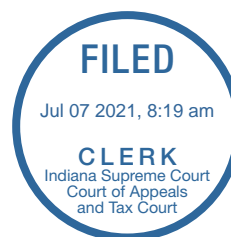


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of C.W. and A.W.
(Minor Children) and K.F.
(Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

July 7, 2021

Court of Appeals Case No.
20A-JT-2368

Appeal from the Madison Circuit
Court

The Honorable G. George Pancol,
Judge

Trial Court Cause Nos.
48C02-2005-JT-104
48C02-2005-JT-105

May, Judge.

K.F. (“Mother”) appeals the involuntary termination of her parental rights to C.W. and A.W. (collectively, “Children”). Mother argues that some of the trial court’s findings were “inadequate” because they allegedly recited a witness’ testimony and did not adopt that testimony as fact. (Br. of Appellant at 9.) Mother also argues the trial court’s findings do not support its conclusion that the conditions that resulted in Children’s removal would not be remedied. We affirm.

Facts and Procedural History

[1] Mother and P.M. (“Father”)¹ are the parents of A.W., born May 15, 2009, and C.W., born January 9, 2013.² In July 2017, Mother left Children in the care of their maternal great aunt and great uncle. She provided great aunt and great uncle with “a hundred and sixty dollars for food, a box of diapers, and a half a package of wipes.” (Tr. Vol. II at 8.) At some point in late July 2017, maternal great aunt and great uncle called the Department of Child Services (“DCS”) because they “financially could not care for the [C]hildren.” (*Id.* at 9.) When DCS went to investigate, great aunt and great uncle told the family case manager that Mother “would just randomly leave the [C]hildren with them and leave for weeks at a time . . . because um she had a new boyfriend and she

¹ Father’s parental rights to Children were also terminated but he does not participate in this appeal.

² A third child, R.W., born June 30, 2015, was also left with maternal great aunt and great uncle and was part of the proceedings. However, Mother does not appeal any trial court action regarding R.W., so we will limit our recitation of the facts to those involving Children.

would be living with the new boyfriend or they would be going off and doing things.” (*Id.* at 10.) DCS removed Children from great aunt and great uncle on August 1, 2017.

[2] On August 2, 2017, DCS filed petitions alleging Children were Children in Need of Services (“CHINS”) “due to [M]other leaving the [C]hildren in the care of her aunt and uncle and never returning to claim her [C]hildren.” (App. Vol. II at 11.) The trial court held initial and detention hearings on August 2, 2017, and authorized the continued removal of Children from Mother’s care. Children were placed in foster care, where they have remained throughout the proceedings. On August 16, 2017, the trial court held a continued initial hearing and Mother³ admitted Children were CHINS “because of housing issues[.]” (*Id.* at 35.) Based thereon, the trial court adjudicated Children as CHINS.

[3] On September 5, 2017, the trial court held a dispositional hearing and issued its dispositional order the same day. The trial court’s decree ordered Mother to participate in individual counseling and follow all recommendations, attend visitation with Children, participate in homebased services, obtain and maintain stable housing and employment, and maintain contact with DCS. Mother’s participation in services was minimal and sporadic. She often would attend one or two meetings with a therapist or complete an intake assessment

³ Father did not attend this hearing or any other hearing related to Children as part of these proceedings.

required by the trial court’s dispositional order, but she would fail to follow through or continue treatment. Due to Mother’s noncompliance with other services, the trial court changed the Children’s permanency plan to reunification with a concurrent plan of adoption on July 25, 2018. As a result of the COVID-19 pandemic, Mother’s services became entirely homebased, but Mother refused to participate in those services. Over the course of the proceedings, service providers reported Mother visited Children on a “somewhat regular basis[.]” (Tr. Vol. II at 14.)

[4] On May 6, 2020, DCS filed petitions to terminate Mother’s parental rights to Children. On July 30, 2020, the trial court held an initial hearing on the termination petitions. On October 20, 2020, the trial court held a fact-finding hearing on the matter. DCS presented evidence that Mother had not completed any services as ordered, stopped visiting with Children in July 2020, and did not have stable housing or employment. On December 10, 2020, the trial court issued its order terminating Mother’s parental rights to Children.

Discussion and Decision

1. Standard of Review

[5] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court’s unique

position to assess the evidence, we will set aside a judgment terminating a parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).

[6] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

[7] To terminate a parent-child relationship, the State must allege and prove:

(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). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

2. Challenged Findings

[8] When, as here, a judgment⁴ contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “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). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[9] Mother challenges the following trial court findings:

23. At the trial on the termination petition conducted on October 20, 2020, at which Krista Kalvatis, Family Case Manager Supervisor [FCMS] testified, the court makes the following

⁴ While there were two termination petitions, the trial court issued one order regarding both Children.

findings and reasonable inferences from this testimony for the purposes of these termination proceedings.

* * * * *

f. FCMS Kalvaitis testified that paternity for the [Children]^[5] was never established, but [Father] is the alleged father.

g. FCMS Kalvaitis testified that [Mother] is the biological mother of the [Children].

h. FCMS Kalvaitis testified that when the case opened, the [Children were] living in Lapel with her great aunt and uncle. [Mother and Father] had left Madison County to look for work in Columbus and had never returned for the [Children] for several weeks.

* * * * *

25. At the trial on the termination petition conducted on October 20, 2020, at which Nathaniel Blue, current FCM [Family Case Manager] Nathaniel Blue testified, and the court made the following findings and reasonable inference from this testimony for the purposes of these termination proceedings.

* * * * *

⁵ The trial court's order refers to "child" and "children" interchangeably. The order addresses the termination of parental rights to Children, and thus, unless a specific child is mentioned by name, we will correct "child" to "Children" throughout our production of the order.

1. FCM Blue testified that [Mother] would never say where she was living. When [Mother] finally said she was living with her mother, it was found that the home was not appropriate for the [Children].

m. FCM Blue testified that there is not a reasonable probability that the conditions which led to the removal of [Children] will be remedied because the case has been open for 3 years, [Mother] has been very inconsistent with services and the [Children] need permanency.

* * * * *

26. At the trial on the termination petition conducted on October 20, 2020, at which [sic] Holly Pollock CASA [Court Appointed Special Advocate] testified. The Court makes the following findings and reasonable inferences from this testimony for the purposes of these termination proceedings.

* * * * *

b. Ms. Pollock testified that there is no reasonable probability the conditions which led to removal will be remedied, because [Mother] has been very inconsistent when it comes to dealing with her issues and she does not even visit [Children] on a consistent basis.

* * * * *

27. At the trial on the termination petition conducted on October 20, 2020, at which [sic] [G.T.], placement testified. The Court makes the following findings and reasonable inferences from this testimony for the purposes of these termination proceedings.

* * * * *

f. [G.T.] testified that the [Children] had some mental issues while cross[-examined], however, the issues are being addressed through a trauma therapist, a life skills coach, an occupational therapist, and a tutor which [G.T.] provides.

* * * * *

28. At the trial on the termination petition conducted on October 20, 2020, at which [sic] [Mother] testified. The Court makes the following findings and reasonable inferences from this testimony for the purposes of these termination proceedings.

* * * * *

e. [Mother] testified that she believed she participated with home based case work and that she didn't move around.

f. [Mother] testified that she only went to 4-5 counseling sessions during the duration of the case because she stated the therapist would always, "break me down" during the sessions. [Mother] stated she stopped going when she couldn't get another therapist after the first 4-5 sessions.

g. [Mother] testified that she does her visits when she can. She testified that the last visit she "pulled off the side of the road and spoke to them the whole time."

h. [Mother] testified that she believes she has a good relationship with her two youngest children [C.W. and R.W.], but with the eldest [A.W.] it is difficult because she

“has her doubts” about [Mother]. [Mother] feels friction with her eldest.

i. [Mother] testified that she is not ready for her kids right now.

(App. Vol. II at 18-22.) Mother argues these findings are improper because they “are merely statements that various witnesses testified to various things.” (Br. of Appellant at 8.)

[10] It is well-established:

A court or an administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z. Rather, the trier of fact must find that what the witness testified to is the fact. Additionally, the trier of fact must adopt the testimony of the witness before the “finding” may be considered a finding of fact.

In re Adoption of T.J.F., 798 N.E.2d 867, 874 (Ind. Ct. App. 2003) (internal citation omitted). While we agree that the challenged findings summarize the testimony of certain witnesses, Mother’s argument ignores the trial court’s other statements regarding the findings.

[11] At the beginning of each finding, the trial court stated it “makes the following findings and reasonable inferences from this testimony for the purposes of these termination proceedings.” (App. Vol. II at 18-22.) Trial court finding 29 states the court “now adopts each of the facts elicited above as its own findings upon due consideration of the testimony and evidence presented, and as individual

bases for its judgment in this cause.” (*Id.* at 22.) The trial court’s language before each set of relevant findings and after all of the findings is sufficient to render the trial court’s reiterations of the witnesses’ testimony as findings and Mother’s challenge thereto fails.⁶ See *Bowyer v. Indiana Dep’t of Nat. Res.*, 944 N.E.2d 972, 984 (Ind. Ct. App. 2011) (accepting recitations of testimony as findings of fact based on the trial court’s statement that it regarded these recitations as fact), *reh’g denied*.

2. Reasonable Probability Conditions Would Not Be Remedied

[12] A trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Mother argues the trial court’s findings do not support its conclusion that the conditions

⁶ Mother also challenged the trial court’s conclusion, which states, “[Children] have been removed from [Mother’s] home since August 1, 2017” (App. Vol. II at 23), because Children were not removed from her care at that date as they were staying with maternal great aunt and great uncle. However, regardless of the physical location from which Children were removed, they were removed from Mother’s care at that time. See *Tipton v. Marion Cnty. Dep’t of Pub. Welfare*, 629 N.E.2d 1262, 1266 (Ind. Ct. App. 1994) (children were removed from both parents’ care when they were removed from mother’s home despite father’s lack of physical custody at the time).

under which Children were removed from Mother's care would not be remedied.

[13] Regarding the reasonable probability that the conditions under which Children were removed from Mother's care would not be remedied, the trial court's unchallenged findings⁷ indicate that Children were removed into DCS custody "due to [M]other leaving the [C]hildren in the care of her aunt and uncle and never returning to claim her [C]hildren." (App. Vol. II at 11.) The trial court noted Children had been removed from Mother's care for "approximately 38 months" at the time of the termination hearing. (*Id.* at 19.) As it was relevant to Mother's participation in services overall, in addition to the findings discussed *supra*, the trial court's unchallenged findings include:

[24]o. [Mother] had brief periods of participation in individual counseling, but had very minimal compliance. Providers reported [Mother] having several no shows and cancels. [Mother] also kept requesting new therapists.

p. There were issues with services because [Mother] kept moving and then would not stay in touch with FCM [Sam Allbee].

q. [Mother] was compliant with home based case work when she was able to, but that was rare because she moved around so much and was homeless. The most recent homeless period was

⁷ We accept the trial court's unchallenged findings as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.").

May 2020. She is now living in a two bedroom apartment with her [m]other, her brother and her husband.

r. Only service that [Mother] was even somewhat regular when it came to participation was visitation. However [A.W.] did not want to visit with her, so the Department set up therapeutic visits which [Mother] never participated in.

(*Id.* at 19-20.) The trial court also found, regarding Mother's more recent participation in services:

[25]c. [Mother] has not been compliant with services for the entirety of FCM Blue's involvement [since May 2020] on the case.

d. Visitation was referred once again at the beginning of this year and was closed out in July of 2020 due to visits being canceled by [Mother]. One was even willing to do weekend visitation during the COVID Pandemic, but [Mother] was still cancelling visits.

e. FCM Blue was able to get the visitation supervisor to keep the referral open for visits due to the Termination Petition being filed, but they closed out after the initial termination hearing in July because [Mother] kept canceling visits.

f. A new visitation referral has been put in and the new provider is having difficulties with cancellations and [Mother is] not willing to work around the [Children's] schedule. [Mother] says she cannot do visits between 3:00pm and 5:00pm because she is driving her husband to work. This does not work for the [Children] because the [Children have] school and it is a long drive to see [Mother]. [Mother] has stated that everyone needs to work around her schedule for visits.

* * * * *

i. A new referral was put in for individual counseling, but [Mother] has not participated and there have been “no active reports” for this period. [Mother] has made minimal contact with the clinician and only called to obtain documentation for the last hearing.

* * * * *

k. Mother has not secured or maintained a stable, legal source of income.

(*Id.* at 20-1.)

[14] Mother argues the trial court’s findings do not support its conclusion that the conditions under which Children were removed from her care would not be remedied because the trial court did not consider that Mother made a “lifestyle choice” when she quit her most recent source of stable income and that Mother’s lack of housing was a result of “difficult” economic times. (Br. of Appellant at 15.) Mother contends the fact that DCS did not consider a two bedroom apartment with four adults living therein to be an appropriate housing arrangement for Children indicates a “class or cultural bias[.]” (*Id.*) Finally, Mother asserts she “still need[s] help. There was no showing that with such help she would be unable or unwilling to meet her parental duties.” (*Id.*) Mother’s arguments are invitations for us to reweigh evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

The trial court's findings supported its conclusion that the conditions under which Children were removed from Mother's care would not be remedied. *See M.B. v. Delaware Cnty. Dep't of Pub. Welfare*, 570 N.E.2d 78, 82 (Ind. Ct. App. 1991) (mother's failure to cooperate with services and failure to improve unacceptable home conditions supported trial court's finding that the conditions under which children were removed from her care would not be remedied).

Conclusion

[15] Mother's challenge to certain trial court findings fails because those reiterations of witness testimony were adopted by the trial court as fact based on other statements in the trial court's order. In addition, the trial court's unchallenged findings supported its conclusion that the conditions under which Children were removed from Mother's care would not be remedied. Accordingly, we affirm the trial court's involuntary termination of Mother's parental rights to Children.

[16] Affirmed.

Bailey, J., and Robb, J., concur.