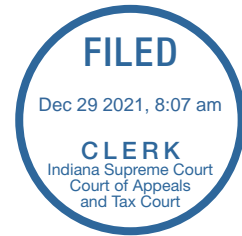


MEMORANDUM DECISION

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 Termination of the Parent-Child Relationship of: Mc.O (Minor Child), and R.N. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

and

Kids' Voice of Indiana,

Guardian Ad Litem,

and

Mc.O. (Child Respondent),

Appellee-Child Respondent.

December 29, 2021

Court of Appeals Case No.
21A-JT-1236

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither,
Judge

The Honorable Scott B. Stowers,
Magistrate

Trial Court Cause No.
49D09-2002-JT-143

Brown, Judge.

[1] R.N. (“Father”) appeals the involuntary termination of his parental rights with respect to his child, M.O. We affirm.

Facts and Procedural History

[2] M.O. was born to Father and R.N. (“Mother”) on January 29, 2008.¹ On November 3, 2011, DCS filed a petition alleging that M.O. was a child in need of services (“CHINS”) under cause number 49D09-1111-JC-42584, and the court adjudicated her to be a CHINS. The case was closed after a successful reunification. On September 10, 2014, DCS filed another petition alleging that M.O. was a CHINS under cause number 49D09-1409-JC-2004. The court adjudicated M.O. to be a CHINS and later closed the case after successful reunification.

[3] On July 13, 2018, DCS filed a petition alleging that M.O. was a CHINS under cause number 49D16-1807-JC-1797. On October 11, 2018, the court adjudicated M.O. to be a CHINS. On December 6, 2018, the trial court ordered Father to engage in home-based therapy and home-based case management, complete a substance abuse assessment, and submit to random drug screens.

[4] On February 6, 2020, in its order regarding the CHINS permanency hearing, the court noted that parenting time had recently been suspended and parents had been “discussing their drug use with the children and also threatened the parenting time supervisor with physical violence. Parents have recently relapsed.” Appellant’s

¹ Mother has five children, including M.O. The appealed order terminating Mother and Father’s parental rights involves M.O., and her sister, Ma.O. Mother does not appeal the termination of her parental rights to M.O. Father does not appeal the termination of his parental rights to Ma.O., his stepdaughter.

Appendix Volume II at 28.² The court found that Father and Mother had “separated due to domestic violence” and “[t]he case has been open since July of 2018 and Mother and [Father] have made no progress toward the children being returned to their care.” *Id.* It also found that the parents had previously disclosed “that they tempt each other to use drugs” and the children “are afraid to return home because parents always relapse.” *Id.* It further found that M.O. expressed a desire to be adopted.

[5] On February 12, 2020, DCS filed a petition to terminate Father’s parental rights with respect to M.O. On April 13, 20, and 21, 2021, the court held a hearing on the termination petition.

[6] Mother testified that she had a violent relationship with Father, and that, “[w]hen we were on drugs, methamphetamines,” there would be hitting, punching, or choking. Transcript Volume II at 26. She testified that, when M.O. lived with her and Father, the relationship would be violent in front of her “every day.” *Id.* at 27. According to Mother, when Father returned in 2018, they “were on meth, so the fighting was not like every day, but it was still fighting.” *Id.*

[7] Family Case Manager Nokwahke Fuyana (“FCM Fuyana”) testified that she managed the case from July 2018 until June 2020. She referred both parents to home-based therapy multiple times for lack of compliance and unsuccessful discharge. She also referred both parents for substance use assessment, home-based case work, and random drug screens. FCM Fuyana testified that re-referring services

² In addition to M.O. and Ma.O., three other children were involved in the 2018 CHINS petitions, but they were not the focus of the termination hearing.

for the parents “was the trend throughout my involvement with the family,” and the parents “were not genuinely involved.” *Id.* at 91, 98. According to FCM Fuyana, Father and Mother did not fulfill court-ordered services, address their substance use, or stabilize their relationship, and it was “the recommendation of the team that [M.O.] needed stability in a permanent home environment.” *Id.* at 102. She testified that the parents did not remedy the reasons for DCS involvement and that she believed adoption was a satisfactory plan for M.O.

[8] Ma.O. testified that she saw drugs “[a]ll the time” while at the home of Father and Mother. *Id.* at 164. She testified that Mother once involved her in a drug sale and her parents permitted her to do drugs in their home. She testified that Mother “would call us names. She wouldn’t just spank us. She would hit me and [my brother], he got the worst of it [H]e got beat so bad one time that he passed out because he couldn’t breathe. We had to call the ambulance” *Id.* at 163.

[9] M.O. testified that she did not wish for further contact with her parents. She testified that the thought of seeing her parents made her anxious and she had nightmares about it, did not feel safe when she lived at home with Father and Mother, witnessed drug usage, was physically and emotionally abused, and would not feel safe visiting with Father and Mother. She testified that “they would hit each other or [Mother] would chase [Father] down in the car” and they “would get in car accidents.” *Id.* at 197. She testified that violence was a form of discipline, and her brother “got chocked [sic]- [Mother] choked [him] before and his face turned red. [Ma.O.] got her hair pulled. We would get whoppings like beat not really on our butt, but like everywhere else too.” *Id.* She testified about a pattern with her parents, in which

“[t]hey got clean and then they got us back and then right after we got taken away,” and that it was a “never ending pattern.” *Id.* at 200-201. M.O. agreed that she feels part of her foster family, they support her emotionally, and her life is on a “totally different path now that [she is] living with them.” *Id.* at 201.

[10] Renee Elsbury, a home-based therapist and clinical social worker who worked with M.O. from September 2018 until February 2021, testified that M.O. discussed how she “had to call the police if things got bad.” *Id.* at 239. If Father and Mother had a disagreement that became physical, “[Father] would use a code word where [M.O.] should call the police but when the police came, she was told to lie to the police about what had happened.” Transcript Volume III at 15. Elsbury testified that M.O. used to “very much want[] to be a part of her parents’ life and stay[] involved with her parents. All the way up until about six months ago, six or seven months ago.” Transcript Volume II at 239. At that point, “she started questioning whether or not she wanted to go back into the environment,” and “she liked herself better out of the environment.” *Id.* at 240.

[11] Latrice Smith testified that she facilitated supervised visits between M.O. and her parents until around early 2020. She testified that Father “did relatively well with the kids initially” and visits were only “a little chaotic.” Transcript Volume III at 23-24. She stated that there were “domestic issues between [Mother] and [Father] during the visits to where we had to end it early.” *Id.* at 33. She testified that Father’s parenting times were sometimes “very consistent and there [were] times where [Father] dropped out of visits when he didn’t come to the visits and [Mother] was just the one coming to the visits.” *Id.* at 42.

[12] Family Case Manager Seleste Fielder (“FCM Fielder”) testified that she took over the case from FCM Fuyana in June 2020. She stated that the parents did not remedy the reasons for DCS involvement and were “not getting services completed successfully . . . [and were] getting closed out continuously in services.” *Id.* at 61. She also testified that the continuation of the parent-child relationship posed a threat to M.O. because “[t]he parent [sic] has not shown the willingness or ability to parent [M.O.]” *Id.* at 65. FCM Fielder supported adoption for M.O.

[13] Guardian ad litem Rabia Bahksh (“GAL Bahksh”) testified that, when she was first assigned to M.O.’s case in July 2018, she recommended continued placement in foster care. Her recommendation since that time has not changed. She stated that there is not “a level of sufficient safety for [M.O.] to return home and to change the plan to reunification.” *Id.* at 92. She testified to a lack of trust in the parent-child relationship, a lack of a reasonable probability the parents will remedy the problems in the relationship, and “although parents certainly have made progress in some areas, all too often what has happened is that progress has backtracked or been taken away in some way.” *Id.* at 95. She stated that continuing M.O.’s parent-child relationship would inflict continuing traumas on M.O. She also testified that permanency and stability were important for M.O., and that in her current placement she was thriving, healing, doing well in school, and doing the best she had ever seen.

[14] On May 24, 2021, the trial court entered an order terminating Father’s parental rights. The court noted Mother and Father’s history of domestic violence, Father’s physical violence toward Mother while under the influence of drugs in the presence of M.O., M.O.’s regular school attendance after leaving parents’ custody, parents’

inconsistent participation in services, and that “[n]either parent ha[d] made significant progress which would warrant reunification or even unsupervised parenting time.” Appellant’s Appendix Volume II at 16. The court found M.O. had been removed from her parents’ care and custody pursuant to a dispositional decree for at least six months prior to the February 12, 2020 filing. It found M.O. would have increased anxiety if returned to her parents’ custody, she had demonstrated great improvements since the start of the termination action, termination was in the best interests of M.O., and reunification would adversely affect M.O.’s mental health. It found Father’s parenting time had been suspended since January 2020, there had been no parenting time since then, and M.O. had been in a foster home where her needs were being met and was in pre-adoptive placement. It concluded there was a reasonable probability that continuation of the parent-child relationship posed a threat to M.O.’s well-being, termination of parental rights was in M.O.’s best interests, and there was a satisfactory plan for the care and treatment of M.O.

Discussion

[15] In order to terminate a parent-child relationship, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[16] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence." *Id.* at 640.

[17] Father asserts the trial court incorrectly made three findings: the existence of the parent-child relationship poses a threat to M.O., termination is in the best interests of M.O., and adoption is a satisfactory plan.

[18] To the extent Father does not challenge the court’s findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[19] The involuntary termination statute is written in the disjunctive and requires proof of only one of the circumstances listed in Ind. Code § 31-35-2-4(b)(2)(B). M.O. has been adjudicated a CHINS on a total of three separate occasions. Further, we observe that the trial court also found that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of M.O. “Clear and convincing evidence need not reveal that ‘the continued custody of the parents is wholly inadequate for the child’s very survival.’” *In re G.Y.*, 904 N.E.2d 1257, 1261 (Ind. 2009) (quoting *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 148 (Ind. 2005) (quoting *Egly v. Blackford Cty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1233 (Ind. 1992))), *reh’g denied*. “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.” *Id.* (quoting *Bester*, 839 N.E.2d at 148 (quoting *Egly*, 592 N.E.2d at 1234)).

[20] The trial court’s order concluded:

59. Continuation of the parent-child relationship poses a threat to [M.O.’s] well-being Continuation of the parent-child relationship adversely affects [M.O.’s] mental well-being. [M.O.] would have an increase in anxiety if returned to [her] parents’ custody. [She has] demonstrated great improvements since this Termination Action opened. Any progress made by parents is not sufficient to heal [M.O.’s] emotional wounds to make reunification a viable option.

Appellant’s Appendix Volume II at 16-17. When asked if she believed continuing the parent-child relationship posed a threat to M.O.’s well-being, FCM Fielder answered: “Yes The parent [sic] has not shown the willingness or ability to parent [M.O].” Transcript Volume III at 65. M.O. said the thought of seeing her parents induced anxiety and nightmares, she had experienced physical and emotional harm, and she did not feel safe with Father and Mother. She testified to a continuous cycle with her parents when they “got clean and then they got us back and then right after we got taken away.” Transcript Volume II at 200. GAL Bahksh testified to the importance of permanency for stable mental health, and specifically for M.O., due to unstable years in the past. She said M.O. “has suffered traumas that are damaging to her” and “this pattern will continue if the relationship is not ended.” Transcript Volume III at 96. With respect to the progress of Father and Mother, GAL Bahksh said, “although parents certainly have made progress in some areas, all too often what has happened is that progress has backtracked or been taken away in some way.” *Id.* at 95. We conclude that clear and convincing evidence supports the trial court’s determination that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to M.O.’s well-being.

[21] To the extent Father challenges the trial court’s finding that termination of the parent-child relationship is in the best interests of M.O., we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before

terminating the parent-child relationship. *Id.* The recommendation of a 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. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[22] GAL Bahksh testified that she was “in agreement with the recommendation to terminate [Father’s] parental rights as to” M.O. Transcript Volume III at 112. FCM Fielder answered affirmatively when asked if the continuation of the parent-child relationship posed a threat to M.O.’s well-being and testified that adoption is in M.O.’s best interests. FCM Fuyana testified that, “[w]e recommended the plan change to adoption.” Transcript Volume II at 101. Father acknowledges that certain findings of the trial court were supported by evidence in the record, including that: domestic violence historically occurred in front of M.O., Father and Mother were inconsistent with court-ordered services, Father had not visited with M.O. since the suspension of parenting time in January 2020, and M.O. had testified that she desired no more contact with her parents and thought adoption was in her best interests. Based on the totality of the evidence, including the recommendations of FCM Fuyana, FCM Fielder, and GAL Bahksh, we conclude the trial court’s determination that termination is in the child’s best interests is supported by clear and convincing evidence.

[23] To the extent Father argues that DCS does not have a satisfactory plan for the care and treatment of M.O., we note that adoption is a “satisfactory plan” for the care

and treatment of a child under the termination of parental rights statute. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied*. FCM Fuyana answered affirmatively when asked if “adoption is a satisfactory plan for [the] care and treatment for [M.O.]” Transcript Volume II at 106. GAL Bahksh has recommended adoption since February 2020. According to M.O.’s testimony, she feels a part of her foster family and “they support [her] emotionally.” *Id.* at 201. We conclude that clear and convincing evidence supports the trial court’s determination that adoption is a satisfactory plan for the care and treatment of M.O.

Conclusion

[24] This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’—that which leaves us with a definite and firm conviction that a mistake has been made.” *Egley*, 592 N.E.2d at 1235. We find no such error here.

[25] For the foregoing reasons, we affirm the trial court.

[26] Affirmed.

May, J., and Pyle, J., concur.