

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.S.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

September 29, 2021

Court of Appeals Case No.
21A-JT-476

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2010-JT-189 & 45D06-
2010-JT-190

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, K.S. (Mother), appeals the trial court's Order, terminating her parental rights to her minor children, A.G. and A.S. (collectively, Children).
- [2] We affirm.

ISSUES

- [3] Mother presents the court with two issues, which we restate as:
- (1) Whether the trial court's determination that there was a reasonable probability that Mother's continued parental relationship with Children posed a threat to their well-being was clearly erroneous; and
 - (2) Whether the trial court's conclusion that termination was in Children's best interests was clearly erroneous.

FACTS AND PROCEDURAL HISTORY

- [4] A.G. was born on September 15, 2013. The Department of Child Services (DCS) removed A.G. from Mother's care in April of 2016 after Mother was found to be intoxicated at a shelter where she had fled from domestic violence. That case was closed on February 10, 2017. On April 5, 2017, DCS received a report that Mother was intoxicated and unable to care for A.G. It had also been reported that Mother had threatened her cousin with a knife and that there had been domestic violence in A.G.'s home between Mother and her boyfriend. By the time a DCS employee arrived at Mother's home to investigate, law

enforcement had already responded. Mother became angry with A.G., told him to “shut the f–k up,” chased him, and threatened “to get him.” (Transcript p. 13). When told that her conduct was inappropriate, Mother also became abusive with the law enforcement officers who were present. Mother was eventually arrested that day for disorderly conduct, leaving no one to care for A.G. DCS removed A.G. from Mother’s care, and he has never returned. A.G. was initially placed in foster care, but he eventually went to live with his aunt.

[5] On April 6, 2017, DCS filed a petition seeking to have A.G. declared to be a child in need of services (CHINS). On August 22, 2017, the trial court adjudicated A.G. to be a CHINS. As a result of the CHINS proceedings, the trial court ordered Mother to participate in reunification services, including supervised parenting time, a parenting assessment and any resulting recommended services, a substance abuse assessment and any recommended services, a clinical mental health assessment and recommended treatment, home-based casework to assist her in finding employment, and domestic-battery victim’s services.

[6] While A.G.’s CHINS case was ongoing, A.S. was born on December 12, 2018.¹ On August 13, 2019, DCS investigated a report that Mother was intoxicated

¹ Paternity was never established for either child. The whereabouts of two alleged fathers were unknown at the time of the instant proceedings. The trial court also terminated the parental rights of the two alleged fathers and any unknown fathers. No fathers participate in this appeal.

and unable to care for eight-month-old A.S. During the investigation, Mother was uncooperative and aggressive. At times she yelled and cursed, and, at other times, she refused to speak. Mother was observed holding A.S. by his neck, and she was unsteady on her feet. A.S.'s diaper and clothing were soaked with urine, and he was wrapped in a fleece blanket despite the fact that it was summer. Mother was arrested for public intoxication and disorderly conduct. DCS removed A.S. from Mother's care and placed him in foster care, where he has remained ever since.

[7] On August 13, 2019, DCS filed its CHINS petition as to A.S. On August 26, 2019, Mother admitted the allegations in DCS's petition, and the trial court adjudicated A.S. to be a CHINS. On November 25, 2019, the trial court ordered Mother to continue to participate in the services it had ordered through A.G.'s CHINS proceedings, and it directed her to participate in an intensive outpatient substance abuse treatment (IOP) to address her alcohol abuse.

[8] Mother did not fully comply with the CHINS case plans. Mother would begin services but would then disappear for months at a time. Mother completed a parenting assessment and two rounds of services aimed at improving her parenting skills, yet she was unable to apply those lessons to her real-life parenting. Mother was scheduled for supervised parenting time twice a week, but she never progressed beyond supervised visits in a third-party facility. An attempted transition for A.G. to parenting time in Mother's home in March of 2019 was suspended after Mother was found to have no food in the home for the visit and as the result of another incident wherein A.G. spilled food on the

floor, Mother poured undiluted bleach on the food, and Mother directed five-year-old A.G. to clean up the mess because she thought he “need[ed] to grow up and be a man.” (Tr. p. 43). From February of 2020 to September of 2020, Mother missed thirty-seven parenting-time sessions, after which her supervised parenting time was closed out for non-compliance.

[9] As for addressing her mental health, Mother completed an initial clinical assessment and a substance abuse assessment to address her alcoholism. Mother has been diagnosed with major depression, bipolar disorder, schizophrenia, and ADHD. Mother was prescribed at least three medications to treat these diagnoses, but she did not take her medication consistently. Mother began individual therapy with Sharon Parker (Parker) in November of 2017 with the goals of maintaining her sobriety and medication management. Mother needs her medication to control her erratic thinking and behavior, and her medication supports her efforts at sobriety. At one point during the CHINS cases, Mother entered an in-patient, twenty-eight-day rehabilitation program for her alcoholism but left after fifteen days.

[10] After Children were removed from her care, Mother had another child. Mother began work with home-based caseworkers to address her lack of employment and transportation issues. Mother had one job in 2017 with UPS but no other employment throughout the CHINS proceedings. Mother made several unsuccessful attempts to qualify for SSI benefits. Mother sporadically followed through on caseworker’s attempts to have her apply for WIC food benefits.

Mother completed her initial domestic violence education, but she did not engage in the recommended domestic violence therapy.

[11] On October 26, 2020, DCS filed petitions seeking to have Mother's parental rights to Children terminated. On February 10, 2021, the trial court convened a fact-finding hearing on DCS's petitions. Parker testified that Mother had not succeeded in achieving sobriety or consistent medication management. Mother had informed Parker that she felt she did not need her medication. Parker could not recommend that Children be returned to Mother's care, and she was concerned that Mother continued to struggle with the same issues after having received almost three-and-one-half years of therapy.

[12] DCS Family Case Manager Tonitia Horton (FCM Horton), who had been with the family since A.G.'s first CHINS case was opened in 2016, also testified at the hearing. FCM Horton reported that Mother still needed hands-on parenting instruction, individual therapy, and substance abuse treatment. FCM Horton related that Mother had "continual" incidents of domestic violence with her boyfriends, including the father of her most recent child, throughout the CHINS proceedings. (Tr. p. 41). FCM Horton reported that Mother had been involved in at least two violent incidents during the CHINS cases, one in which Mother had punched the driver of a moving car in which she was a passenger and another which had occurred in December of 2020 wherein she had argued with people at a bus stop as part of an ongoing feud. Mother remained unemployed. Mother had indicated to FCM Horton repeatedly at team meetings that she would engage in services, but then she would not follow through.

[13] FCM Horton opined that termination was in Children's best interests. As to A.G., FCM Horton related that he had already been removed from his home four times in the seven years he had been alive and that he had difficulty adjusting to each new placement. According to FCM Horton, as a result of these experiences, when A.G. would leave his aunt's home, he would always ask if he was coming back because he had come to expect sudden departures. A.G. was just becoming truly comfortable in his aunt's home, where he had been for the previous two years. He was bonded to his aunt and to another little boy who also lived in his aunt's home. A.S. was similarly bonded to his foster family, who had a daughter in the home with whom he was close. A.S. was thriving in his foster family's care.

[14] DCS Assessment Worker Alexandra Mauger (Mauger) testified regarding an incident that had occurred on January 15, 2021. Mauger was sent to Mother's home to investigate a report that a fire had occurred there, Mother was intoxicated, and Mother was about to be arrested. Mauger's investigation revealed that Mother was at home with her youngest son, who was then six months old, and her two older daughters of whom she did not have legal custody but who were visiting at the time. A fire had started on the stove in the kitchen. Mother provided changing explanations for how the fire could have started. Mother had not immediately evacuated the children when she awoke to a smoke-filled home, and, as she attempted to put out the fire herself, she had lost track of the children's whereabouts. As part of the investigation, Mauger asked Mother if she had been taking her medications. When Mother showed

Mauger her medication bottles, Mauger observed that, although some of the prescriptions were expired, the bottles were full of pills, which indicated to her that Mother continued to mismanage her medication.

[15] On February 23, 2021, the trial court issued its Order, terminating Mother's parental rights to Children. The trial court entered detailed findings of fact consistent with the above-referenced circumstances. The trial court also issued its conclusions of law that there was a reasonable probability that the conditions which had resulted in Children's removal would not be remedied and a reasonable probability that the continuation of the parent-child relationship posed a threat to Children's well-being. The trial court further concluded that termination of Mother's parental rights was in Children's best interests.

[16] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

[17] Mother argues that the trial court's legal conclusions terminating her rights to Children were unsupported by the evidence. It is well-settled that when reviewing the evidence supporting the termination of parental rights, we neither reweigh the evidence nor determine the credibility of witnesses. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In addition, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence, giving due regard to the trial court's opportunity to judge the credibility of witnesses firsthand. *Id.* Where, as here, a trial court has entered

findings of fact and conclusions thereon, we will not set aside its findings or judgment unless they are clearly erroneous. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). In making that determination, we assess whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We observe that Mother does not challenge the evidence supporting any of the trial court’s factual findings. Therefore, we must accept the trial court’s findings as true. *S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

II. *Termination of Mother’s Rights*

[18] Our supreme court has recognized that the relationship between a parent and his or her child is one of the most valued relationships in our culture and that the parental interest in a child is “perhaps the oldest of the fundamental liberty interests.” *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental interests are not absolute. *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019). Indeed, “children have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships.” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). As a result, parental rights and interests must be subordinated to those of the child, and a parent’s rights may be terminated where he or she is unable or unwilling to meet the responsibility of providing for the child’s immediate and long-term needs. *K.T.K. v. Ind. Dept. of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[19] “[T]ermination of a parent’s relationship with a child is an extreme measure to be used only as a last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.” *Matter of K. T.*, 137 N.E.3d 317, 329 (Ind. Ct. App. 2019). Before a parent’s rights are terminated, the State is required to prove a host of facts by clear and convincing evidence, including that there is a reasonable probability that the conditions which resulted in the child’s removal and continued placement outside the home will not be remedied or that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i-ii). The State is also required to prove that termination is in the child’s best interests. *See* I.C. § 31-35-2-4(C).

[20] Here, the trial court found that both subsection (B) factors, namely those pertaining to the conditions of removal and the threat posed by Mother’s continued relationship with Children, warranted termination. Mother only develops argument pertaining to the trial court’s finding that her continued relationship with Children posed a threat to their well-being. The statute is written in the disjunctive. Therefore, the unchallenged trial court findings pertaining to the “conditions of removal” element were sufficient to fulfill the requirements of subsection 31-35-2-4(b)(2)(B). Nevertheless, given the importance of the interests at stake, we will address the merits of Mother’s claim on the other subsection (B) factor.

III. *Parental Relationship as Threat to Children's Well-being*

[21] Mother challenges the trial court's conclusion that there was a reasonable probability that her continued relationship with Children posed a threat to their well-being. The trial court entered the following uncontested findings to support its conclusion:

Mother was diagnosed with major depression, schizophrenia, bipolar and ADHD. Mother is on a number of medications for her mental health. Mother is very sporadic with taking her medications. Mother is not compliant with [her] medication regime. Mother's actions would be very erratic and violent at times. Mother has said that she does not need the medications. Mother requires medication assistance and continued therapy.

The safety of [C]hildren would be in question if in [M]other's care. Mother's behaviors are erratic and unpredictable. For example, [M]other had a stove fire in her home on January 15, 2021 where [M]other was going to be arrested due to extreme intoxication. Mother had another child in her care at the time of the fire. Mother has numerous challenges in her ability to care for the [C]hildren. Mother has challenges with decision making.

Mother has domestic violence issues and was offered therapy for the violence. Mother has not completed the service. Mother has had various domestic violence incidents throughout the CHINS cases. They have been continua[1,] and [M]other is violent and very aggressive. Mother has been in numerous fights and arrested on a number of occasions for her violent behaviors. Mother has anger issues that have not been addressed.

(Appellant's App. Vol. II, p. 3). The trial court additionally found that Mother "continued to have issues with extreme intoxication[,]" did not have "stable

income, transportation or housing[,]” and that she was “unable to provide for the basic needs of [C]hildren.” (Appellant’s App. Vol. II, pp. 3-4). The trial court based its judgment on all these findings as well as its determination that Children “deserve a loving, caring, safe and stable home.” (Appellant’s App. Vol. II, p. 4).

[22] Children were removed from Mother due to her erratic, violent behavior and her inability to provide care. Whether due to intoxication, poor medication management, or inconsistent efforts at services, Mother made no progress in addressing her behavior, which, as demonstrated by the bus stop fight and the house fire, continued almost up to the date of the termination fact-finding hearing. In addition, Mother’s continued unwillingness or inability to disengage from relationships involving domestic violence also posed a significant threat to Children’s well-being in that the potential for them to be exposed to violence remained. While these findings alone supported the trial court’s judgment, we also observe that at the time of the termination fact-finding hearing, Mother was still unemployed, had no other income, and only sporadically made efforts to apply for food benefits. A trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. Given the real threat to Children posed by Mother’s continued erratic behavior, exposure to domestic violence, and inability to provide for Children, we cannot say that the trial court’s conclusion was clearly erroneous. *See In re I.A.*, 934 N.E.2d at 1132.

[23] Rather than demonstrate how the aforementioned findings failed to support the trial court's determination, Mother argues that she testified that she was in therapy, she had an explanation for the house fire that downplayed her responsibility, she has never been convicted of a domestic violence offense, and she never physically harmed Children. Mother also contends that the trial court did not adequately credit her attendance at in-patient substance abuse treatment, her completion of parenting classes, her own testimony that she was taking her medications as prescribed, and some positive testimony provided by Parker. All these arguments are unavailing, as, in contravention of our standard of review, Mother essentially requests that we consider evidence that does not support the trial court's conclusion, that we reweigh the evidence, and that we reassess the credibility of the witnesses. *See In re E.M.*, 4 N.E.3d at 642. Accordingly, we will not disturb the trial court's judgment.

IV. *Children's Best Interests*

[24] Mother also challenges the trial court's conclusion that termination of her parental rights was in Children's best interests. Our supreme court has recognized that one of the most difficult aspects of a termination of parental rights determination is the issue of whether the termination is in the child's best interests. *Id.* at 647 (noting that the question "necessarily places the children's interest in preserving the family into conflict with their need for permanency"). The trial court's determination that termination was in a child's best interests requires it to look at the totality of the evidence of a particular case. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. "In doing so, the trial

court must subordinate the interests of the parents to those of the children involved.” *Id.*

[25] Here, Mother failed to address the shortcomings of her behavior and only intermittently exercised her parenting time with Children. Between February and September of 2020, Mother missed thirty-seven parenting-time sessions before her supervised parenting-time services were finally closed out. By the time of the fact-finding hearing, A.G. had been moved four times in his short lifetime. FCM Horton testified regarding the difficulty this caused him and regarding his need for permanence. A.G. and A.S. were thriving in their homes, where they were bonded with their caregivers and other children. By contrast, there was no testimony at the termination fact-finding hearing regarding Mother’s bond with Children.

[26] The trial court concluded that the

Indiana Supreme Court has held that at some point in time a child’s right to permanency outweighs a parent’s ever important right to parent. The [c]ourt finds that in these cases, [Children] certainly have a right to permanency.

It is in the best interest[s] of [C]hildren[’s] health, welfare and future that the parent-child relationship between [C]hildren and [Mother] be forever fully and absolutely terminated.

(Appellant’s App. Vol. II, p. 4). Mother had almost four years to demonstrate that she could adequately parent Children, but she did not meet that goal.

FCM Horton, who had been with this family since 2016, testified that Children

needed stability and that termination was in Children's best interests. The trial court was entitled to accord substantial weight to that testimony.

[27] Mother's main argument on this point is that Children will suffer by not having future contact with Mother and their other siblings. Mother's argument, which is largely based on speculation, calls upon us to discount FCM Horton's testimony, something that we do not do as part of our review. *See In re E.M.*, 4 N.E.3d at 642. We conclude that, given the totality of the evidence before the trial court, its best-interests determination was not clearly erroneous. *See In re I.A.*, 934 N.E.2d at 1132.

CONCLUSION

[28] Based on the foregoing, we conclude that the trial court's findings supported its conclusions regarding Mother's continued relationship with Children being a threat to their well-being and regarding termination being in Children's best interests.

[29] Affirmed.

[30] Najam, J. and Brown, J. concur