

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of
T.W.B. (Minor Child),
S.G. (Mother),
Appellant-Respondent,

v.

J.G. (Guardian),
Appellee-Petitioner

October 11, 2023

Court of Appeals Case No.
23A-AD-735

Appeal from the Jefferson Circuit
Court

The Honorable Donald J. Mote,
Judge

Trial Court Cause No.
39C01-2105-AD-12

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] S.G. (“Mother”) appeals the Jefferson Circuit Court’s grant of J.G.’s petition to adopt Mother’s minor child T.W.B. (“Child”). S.G. presents three issues for our review, which we consolidate and restate as whether the trial court erred when it concluded that her consent to Child’s adoption was not required. We affirm.

Facts and Procedural History

[2] In 2017, Mother used methamphetamine and marijuana during a pregnancy, and her child H. was born with “drugs in his system[.]” Tr. p. 28. Mother entered into an informal adjustment with the Department of Child Services (“DCS”), but she soon tested positive for methamphetamine, and DCS removed H. from Mother’s care. DCS provided services for Mother, including substance abuse treatment and therapy. Mother completed a substance abuse rehabilitation program, but three days later she tested positive for methamphetamine and marijuana. In August 2018, Mother voluntarily relinquished her parental rights over H., and he was later adopted.

[3] Throughout 2018 and 2019, Mother’s family “went to great efforts” to help her overcome her substance abuse issues. Appellant’s App. Vol. 2, pp. 107-08. Those efforts were to no avail. On March 5, 2020, Child was born. Again, Mother had used methamphetamine during her pregnancy, and Child’s umbilical cord showed that he was “drug exposed.” *Id.* at 94. Mother and Child’s father, T.B. (“Father”), entered into an informal adjustment with the Department of Child Services (“DCS”). A few weeks later, on April 16, Father shot and killed someone during a drug deal, with Mother and Child present.

Both Father and Mother were arrested and charged with felonies associated with the murder, which occurred in Ohio. DCS placed Child in J.G.'s care.¹

- [4] On May 27, 2021, J.G. filed a petition to adopt Child. Mother was still incarcerated pending her trial. Following a December 8, 2022, hearing, the trial court found that neither Mother's nor Father's consent was needed to grant the adoption petition. On September 15, 2023, the trial court entered the final adoption decree. This appeal ensued.²

Discussion and Decision

- [5] Mother challenges the trial court's findings in support of its conclusion that her consent to the adoption was not required. We review Mother's arguments under our clearly erroneous standard. Findings are clearly erroneous when there is no support in the record for them, and a judgment is clearly erroneous when it is not supported by the findings. *J.J. v. G.C. (In re K.T.)*, 172 N.E.3d 326, 336 (Ind. Ct. App. 2021), *trans. denied*. We consider only the probative evidence and reasonable inferences that support the judgment, and we neither reweigh the evidence nor determine the credibility of witnesses. *Id.*

¹ J.G. is Mother's aunt.

² Father does not participate in this appeal.

[6] Indiana law generally requires natural parents to consent to adoptions. [Ind. Code § 31-19-9-1 \(2023\)](#). However, [Indiana Code section 31-19-9-8](#) provides in relevant part that

(a) Consent to adoption . . . is not required from any of the following:

* * *

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

* * *

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

[7] Here, the trial court concluded that Mother’s consent to the adoption was not required under both subsection (a)(2) and (a)(11), and Mother challenges the trial court’s findings to support both conclusions. Because the statute is written in the disjunctive, however, we need only address the trial court’s findings to support his conclusion that Mother is unfit to parent Child.

[8] As we have explained:

While the term “unfit” as used in [Ind. Code § 31-19-9-8\(a\)\(11\)](#) is not statutorily defined, this court has defined “unfit” as “[u]nsuitable; not adapted or qualified for a particular use or service” or “[m]orally unqualified; incompetent.” *In re Adoption of M.L.*, 973 N.E.2d 1216, 1223 (Ind. Ct. App. 2012) (quoting Black’s Law Dictionary 1564 (8th ed. 2004)). We have also noted that statutes concerning the termination of parental rights and adoption “strike a similar balance between the parent’s rights and the child’s best interests” and thus termination cases provide useful guidance in determining whether a parent is unfit. *Id.* Termination cases have considered factors such as a parent’s substance abuse, mental health, willingness to follow recommended treatment, lack of insight, instability in housing and employment, and ability to care for a child’s special needs. *Id.* Also, this Court has consistently held in the termination context that it need not wait until children are irreversibly harmed such that their physical, mental, and social development are permanently impaired before terminating the parent-child relationship. See *In re A.P.*, 981 N.E.2d 75, 83 (Ind. Ct. App. 2012). It is well-settled that individuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children. *In re Adoption of H.N.P.G.*, 878 N.E.2d 900, 907 (Ind. Ct. App. 2008), *trans. denied*[.] Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it

would be without the evidence. [Ind. Evidence Rule 401](#). A parent’s criminal history is relevant to whether the parent is unfit to be a parent under [Ind. Code § 31-19-9-8\(a\)\(11\)](#). See *In re T.W.*, 859 N.E.2d 1215, 1218-1219 (Ind. Ct. App. 2006) (discussing evidence of the father’s criminal history in reviewing the trial court’s finding of parental unfitness).

In re K.T., 172 N.E.3d at 336-37 (citation omitted).

- [9] In support of its conclusion that Mother is unfit to parent Child, the trial court found that Mother’s history of “serious substance abuse” and “behaviors at the time of, and since, her arrest, demonstrate she is not fit to parent [Child.]” Appellant’s App. Vol. 2, p. 108. The trial court specifically found that (1) Mother had brought Child to the drug deal where Father had shot and killed someone and (2) Mother continued to use illegal substances while incarcerated pending trial in Ohio. Mother argues that there is no evidence to support either of those two findings. Mother is incorrect.
- [10] First, Mother’s sister J.L. testified that Mother had told her that she and Child were “present when [the] murder occurred” during the drug deal with Father. Tr. p. 57. And second, J.L. testified that, on a phone call during her recent incarceration, Mother “was like really excited and hyper and telling [her] that they were doing something called whip-its.” Tr. p. 57. J.L. later found out that “whip-its have drugs in them.” *Id.* Thus, the evidence supports the challenged findings. Mother does not challenge any other of the court’s findings, and she makes no contention that Child’s best interests are not served by dispensing with her consent. See [I.C. § 31-19-9-8\(a\)\(11\)\(B\)](#).

[11] The evidence shows that Mother used methamphetamine during two pregnancies in a three-year period. Despite assistance offered from both her family and DCS, Mother has been unable to recover from her substance abuse issues, even while incarcerated. Finally, Mother brought six-week-old Child to a drug deal that resulted in Father fatally shooting someone in Child's presence. The trial court did not err when it concluded that Mother's consent to Child's adoption was not required because she is unfit to parent Child and Child's best interests are served without Mother's consent to the adoption. Accordingly, we affirm the adoption decree.

[12] Affirmed.

Vaidik, J., and Pyle, J., concur.