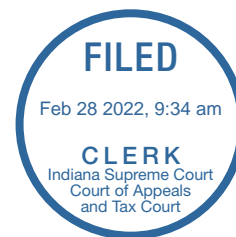


MEMORANDUM DECISION

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 the Termination
of the Parent-Child Relationship
of: E.M., H.W., Ja.W., Hy.W.,
Je.W., and L.W. (Minor
Children);

J.W. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

February 28, 2022

Court of Appeals Case No.
21A-JT-1788

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause Nos.

59C01-2011-JT-200

59C01-2011-JT-201

59C01-2011-JT-202

59C01-2011-JT-203

59C01-2011-JT-204

59C01-2011-JT-205

Vaidik, Judge.

Case Summary

- [1] J.W. (“Mother”) appeals the termination of her parental rights to six of her children. We affirm.

Facts and Procedural History

- [2] Mother and Jo.W. (“Father”) (collectively, “Parents”) married in 2013. Mother is the biological mother of E.M., born in 2011, H.W., born in 2013, Ja.W., born in 2014, Hy.W., born in 2016, Je.W., born in 2017, and L.W., born in 2019. Father is the biological father of E.M., Ja.W., Hy.W., Je.W., and L.W. and the legal father of H.W.¹ Father’s parental rights to all six children were also terminated, but he does not participate in this appeal, so we limit our narrative to the facts relevant to Mother.
- [3] On April 1, 2016, the Department of Child Services (DCS) in Orange County received a report that Hy.W., born the day before, tested positive for opiates and there was ongoing drug use in the home. At the time, Parents resided with four-year-old E.M., two-year-old H.W., one-year-old Ja.W., and the newly born Hy.W. Family Case Manager (FCM) Kimberly Byrum investigated the

¹ Several witnesses, including Mother, testified Father is not the biological father of H.W. However, because Mother and Father were married when H.W. was born, Father is the legal father. No petition to disestablish paternity was ever filed.

report, and Mother admitted to using illegal substances during her pregnancy. Parents entered into an Informal Adjustment with DCS to participate in services but failed several drug screens. In November, DCS filed petitions alleging the children were children in need of services (CHINS) due to Parents' continued drug use. In February 2017, the children were adjudicated CHINS but remained in the home. At the dispositional hearing, Parents were ordered to, among other things, obey the law, complete a substance-abuse assessment and follow any recommended treatment, not use illegal substances, and submit to drug screens.

[4] In May, Mother was charged with Level 6 felony possession of methamphetamine.² At the time, Father was incarcerated.³ Due to these ongoing legal and substance-abuse issues, the children were removed from Parents' care. The children were initially placed with their great-grandmother but due to her medical issues were removed a few months later and placed in foster care. After the children's removal, Parents partially complied with the case plan. Parents began therapy to address "coping skills" and "sobriety" but attended only a few sessions. Tr. Vol. II p. 101. DCS recommended Parents participate in a drug-rehabilitation program, but Parents refused in-patient treatment and inconsistently attended outpatient treatment. In November, Je.W. was born and tested positive for THC, alcohol, opiates, and

² Mother pled guilty, and the conviction was later reduced to a Class A misdemeanor.

³ The record does not reveal why Father was incarcerated.

methamphetamine. As a result, he was also placed in foster care. DCS filed a petition alleging Je.W. was a CHINS that month, and he was adjudicated a CHINS in March 2018.

- [5] Later that year, the five children were removed from their foster placement. E.M., H.W., and Ja.W. were placed with their paternal grandparents and Hy.W. and Je.W. were placed with another foster family (“Foster Parents”). In January 2019, L.W. was born. Mother tested positive for illegal substances while pregnant with L.W. and for several months after the birth. Because of this, DCS filed a petition alleging L.W. was a CHINS in April 2019, and she was adjudicated as such in July. L.W. remained in the home with Parents. Around this time, Parents began complying with the case plan, attending therapy, consistently visiting with the children, and generally testing negative for drugs. In October, Hy.W. and Je.W. were removed from Foster Parents and placed with their paternal grandparents to connect with their older siblings in anticipation of a trial home visit with Parents.
- [6] The trial home visit began in December 2019 and included all five removed children—now 8, 6, 5, 3, and 2—as well as eleven-month-old L.W. However, Parents struggled to adjust to a home with six children. In early February 2020, at Parents’ request, Hy.W. and Je.W. were removed from the visit and placed back with Foster Parents. That same month, Parents experienced issues in their relationship, and the older children reported Parents argued in front of them. E.M. and H.W. began exhibiting poor behavior and mental health at school, and E.M. indicated she was unable to sleep due to concerns over Parents’

fighting, causing her to hallucinate at school. During one fight between Parents, Mother threw a wooden board at Father but accidentally hit H.W. Father also began testing positive for methamphetamine, and Mother refused drug screens. In March, the probation department searched the home—pursuant to Mother’s probation for her 2017 possession-of-methamphetamine conviction—and found marijuana. Due to Parents’ marital issues and substance abuse, the trial home visit was terminated unsuccessfully and the remaining four children—E.M., H.W., Ja.W., and L.W.—were removed from the home. E.M. and H.W. were placed together with one foster family and Ja.W. was placed with another. L.W. joined Hy.W. and Je.W. with Foster Parents, where they have since remained.

[7] After the home visit was terminated unsuccessfully, Parents were not compliant with the case plan. They frequently cancelled visits with the children, and when they did attend they were “overwhelmed,” fought during visits, and were unable to deal with the children’s “emotional outbursts” or appropriately discipline. Tr. Vol. III p. 61. Parents attended only a few therapy sessions in the spring of 2020, despite weekly appointments, and stopped attending altogether

by June.⁴ Mother often refused to submit drug screens. In July and September, Mother tested positive for methamphetamine.⁵

[8] In November, DCS petitioned to terminate Parents' rights to all six children. That month, the three oldest children—E.M., H.W., and Ja.W.—were removed from their foster homes and placed again with their paternal grandparents, where they have since remained. In January 2021, Mother tested positive for methamphetamine, amphetamine, and THC. After this drug screen, Mother refused to submit any others.

[9] The termination hearing was held over five days between February and May 2021. Mother's past therapist testified she attempted to work with Mother on coping with her substance-abuse issues but that Mother's attendance was inconsistent and she made "very little" progress. *Id.* at 128. Mother's current therapist testified she began working with Mother in February 2021, the same month as the first day of the termination hearing, and that Mother often missed appointments.

[10] FCM Karen Howson, who was the family's case manager from 2017 to 2020, testified she spoke with Parents "a lot" about attending an in-patient rehabilitation program but Mother never went. *Id.* at 182. She also testified

⁴ Mother re-engaged in therapy in February 2021 while the termination hearing was ongoing, but her participation remained inconsistent.

⁵ In October, Mother gave birth to Parents' seventh child, D.W., who tested positive for illegal substances at birth and was removed and placed in foster care. D.W. was adjudicated a CHINS in January 2021 but is not a party to this termination matter.

Parents' substance abuse led to marital issues, which affected the children to the point that E.M. was unable to sleep and hallucinating while at school. FCM Carole Johnson, the family's current case manager, testified Parents were not willing to engage in services to address their substance-abuse issues and that it is in the best interests of the children for the parent-child relationships to be terminated. The children's Court Appointed Special Advocate (CASA) Sarah Whiteman testified she had concerns about Parents' substance use and inability to provide a sober caregiver, especially given many of the children are under the age of five and must rely on the adults around them for safety. She also noted Parents' substance use and marital issues affected the mental health of the older children because those children were "aware" of the issues and felt a need to "monitor" their parents. *Id.* at 222.

[11] Foster Parents testified they are bonded to Hy.W., Je.W., and L.W. and wish to adopt them. The children's grandmother testified she wishes to adopt E.M., H.W., and Ja.W., and is committed to maintaining contact with Foster Parents so all the children can see each other. Finally, Mother testified at the hearing in April 2021 that her drug addiction is not "under control," she is currently facing a probation revocation due to her failed drug screens, and that it had only been "a couple of weeks" since she last used methamphetamine. Tr. Vol. IV pp. 82, 88. She also testified she does not think she can take care of her children while on drugs.

[12] After the hearing, the trial court issued an order terminating Parents' rights to all six children.

[13] Mother now appeals.

Discussion and Decision

[14] Mother argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[15] A petition to terminate parental rights must allege, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

I. Findings of Fact

[16] Mother argues the evidence does not support several of the trial court's findings of fact. Mother first challenges Finding 245, which states

Mother's substance use and Father's substance use has already harmed their children:

a. Parents have seven (7) children who are in out-of-home care as a result of DCS involvement;

b. Parents have used substances together during the entire lifetime of the oldest child, [E.M.], who is nine (9) years old;

c. Parents have had drug-exposed infants born during their relationship who remain in out-of-home care.

d. Mother used illegal substances when she was pregnant with [Ja.W.], [Hy.W.], and [Je.W.];

e. Parents' use of illegal substances has caused issues in their relationship which creates instability and emotional harm to the children and [the children are] involved by [P]arents in their marital issues;

f. Parents' use of illegal substances [has] prevented them from being consistent and providing for the care and supervision of the children; and

g. Parents have not provided the children with a safe, stable home free from drugs and neglect.

Appellant's App. Vol. III p. 115. Mother argues this finding is erroneous because there is no "evidence that the Mother's substance abuse prevented her from caring for the Children or caused the Children any harm." Appellant's Reply Br. p. 10. But FCM Howson testified Parents' substance abuse caused problems in their marriage, and that the older children witnessed this fighting and were affected by it, to the point that their oldest child could not sleep and hallucinated. CASA Whiteman testified Parents' drug use left the children without adequate supervision, which posed a safety risk to their young children who were dependent on them and forced the older children to monitor their own parents. Mother herself testified she did not believe she could care for the children while on drugs. The trial court did not err in making this finding.

[17] Mother also challenges Findings 193, 218, 219, and 244, which state the following:

193. Mother has been unwilling to engage in substance use services offered to her by DCS during these cases.

* * *

218. Parents have failed to complete or benefit from a multitude of services offered to them through the DCS for over five (5) years.

219. Mother and Father have been unwilling to engage in services and have been ambivalent about the court process having attended the CHINS Fact Finding Hearing of D.W. while under the influence of Methamphetamine less than one month before the opening of the Termination Hearing and after termination proceedings had been pending for over two (2) months.

* * *

244. CASA Whiteman does not believe that Mother and Father can provide safety and security for the children or that the children should be returned to their care and testified credibly that:

- a. Parents have not shown consistent measurable change that would coincide with the goals for reunification;
- b. Parents have ongoing substance abuse;
- c. Parents have not complied with services;
- d. Parents have had a lack of follow through;

- e. Parents have continued run-ins with law enforcement;
- f. Parents have not made their scheduled visitations with the children;
- g. Parents have not participated in home therapy or individual therapy;
- h. Parents continued to have positive drug screens; and
- i. Parents cannot meet the children's needs.

Appellant's App. Vol. III pp. 24, 26, 28-29. Mother does not argue these findings are erroneous but contends they "basically accuse [her] with total failure during the pendency of these proceedings" and points to other evidence of her compliance in the case. Appellant's Br. p. 30. This is a request to reweigh evidence, which we do not do. *In re K.T.K.*, 989 N.E.2d at 1229.

[18] Mother has not established the challenged findings are clearly erroneous.

II. Conclusions of Law

A. Conditions Remedied

[19] Mother next challenges the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what

conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[20] The reason for the children's removal and continued placement outside the home was Parents' substance abuse and inability to provide a sober caregiver for their young children. And after four years, Mother has not shown the ability to remedy this issue. During the case, Mother had three children, all of whom were born with drugs in their systems. She tested positive for illegal substances throughout the case or refused to screen at all. She testified at the termination hearing that her drug addiction was still not under control and it had only been a few weeks since she'd used methamphetamine. Nor has Mother shown much interest in working on her substance abuse. She refused to attend inpatient substance-abuse treatment as recommended by DCS. DCS also referred her to numerous therapists, all of whom attempted to work with her on her substance use, but she never made progress with these therapists due to her lack of attendance.

[21] Nonetheless, Mother argues the trial court's findings "focus exclusively on [her] historical failures during the course of the CHINS and termination proceedings" and that these are inadequate to support the conclusion that the reasons given for the removal of the children would not be remedied.

Appellant's Br. p. 25. To support this argument, Mother cites our decision in *In re C.M.*, 960 N.E.2d 169 (Ind. Ct. App. 2011).

[22] There, a mother's children were removed due to her substance abuse and related legal issues. However, by the time of the termination hearing, the mother had voluntarily enrolled in a substance-abuse program, had consistent negative drug screens, and had two other children who remained in her care. Nonetheless, the trial court terminated her parental rights, noting only her historical failures during the proceedings. We reversed, holding

the court's focus on historical conduct, absent factual findings as to Mother's current circumstances or evidence of changed conditions, is akin to terminating parental rights to punish the parent. And, without more, the findings are insufficient to establish each element necessary to support the conclusion that termination is warranted in this case.

Id. at 175.

[23] That is not the case here. Contrary to Mother's contentions, the trial court made numerous findings on her current circumstances, including that she had yet to complete a substance-abuse program, had a pending probation revocation on a drug-related criminal case, no longer participated in therapy, and had used methamphetamine as recently as a couple weeks before the final days of the hearing. *See* Appellant's App. Vol. III pp. 110-11. Given that Parents' drug use was the predominant reason for the children's removal and continued placement outside of the home, these findings support the trial court's conclusion.

[24] The trial court did not err when it concluded there is a reasonable probability the conditions leading to the children’s removal will not be remedied.⁶

B. Best Interests

[25] Mother next challenges the trial court’s conclusion termination is in the best interests of the children. In determining the best interests of a child, the trial court must look at the totality of the evidence. *See In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.* We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence 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.*

⁶ Mother also challenges the trial court’s conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to the children’s well-being. But because we affirm the trial court’s conclusion there is a reasonable probability the conditions resulting in the children’s removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the two requirements of subsection (b) has been established by clear and convincing evidence), *trans. denied.*

Ind. Dep't of Child Servs., 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*.

[26] Here, FCM Johnson and CASA Whiteman support the termination of Mother's parental rights, believing it to be in the children's best interests. Moreover, as we noted above, Mother's issues with substance abuse have not been remedied and pose a safety risk to the children if they were returned to her care. *See In re A.S.*, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014) (finding termination of parental rights in children's best interests where parents did not address their substance-abuse issues or complete recommended services during the two-year case), *trans. denied*. While this evidence alone is sufficient to support the trial court's conclusion, permanency is a central consideration in determining best interests. The record shows the older children have bounced around through several foster homes and relative placements for four years, while most of the younger children have been with Foster Parents their entire lives. Each child now resides in a loving and stable home. The oldest three children are with their grandparents, who wish to adopt them. The youngest three children are with Foster Parents, who wish to adopt them. All the children are bonded to their placement and their siblings, and the grandparents and Foster Parents show a willingness to maintain the sibling bond among the children.

[27] For all these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Mother's parental rights is in the children's best interests.

[28] Affirmed.

Najam, J., and Weissmann, J., concur.