

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
K.H., Kyn.S., and Kyl.S. (Minor
Children) and K.M.H. (Mother)
K.M.H. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

August 3, 2022

Court of Appeals Case No.
22A-JT-530

Appeal from the
Allen Superior Court

The Honorable Lori K.
Morgan, Judge

The Honorable
Sherry A. Hartzler, Magistrate

Trial Court Cause Nos.
02D08-2106-JT-177
02D08-2106-JT-178
02D08-2106-JT-179

Vaidik, Judge.

Case Summary

- [1] K.M.H. (“Mother”) appeals the termination of her parental rights to her children. We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of K.H. (born in October 2013), Kyn.S. (born in March 2016), and Kyl.S. (born in March 2017).¹ In May 2017, the Indiana Department of Child Services (DCS) filed petitions alleging the children were children in need of services (CHINS). Specifically, DCS alleged Kyl.S. was born in March with marijuana in her system and Mother had tested positive for marijuana on April 5, 19, and 28. Mother admitted the children were CHINS, and the trial court ordered her to, among other things, submit to random drug screens, maintain suitable housing, and complete various services.
- [3] At first, Mother did well, and the children remained in her care. Mother completed a diagnostic assessment, a psychological evaluation, and home-based services. But things started to deteriorate. Mother underwent a substance-abuse assessment at Dockside in February 2018 but didn’t complete the

¹ The biological fathers of the children had their parental rights terminated, but they don’t appeal. We therefore focus on the facts relevant to Mother.

In addition, Mother gave birth to a fourth child, T.S., in December 2020. Although T.S. is not a party to this termination case, he was adjudicated a CHINS in August 2021 due to Mother’s use of fentanyl during and after pregnancy. *See, e.g.*, Ex. p. 168; Appellee’s App. Vol. II p. 6.

required treatment and was discharged in February 2019. In July 2019, Mother was charged with possession of marijuana (she later pled guilty and was sentenced to sixty days in jail). Later that month, Mother went to Harriet House, a halfway house that provides substance-abuse treatment, but she left the next month. On August 29, DCS removed the children from Mother's care "due to issues with [her] sobriety and [her] behavior while she was at the Harriet House." Tr. p. 105. The trial court placed the children in a relative's care (the children were later moved to foster care) and gave Mother therapeutic supervised visitation.

[4] Mother consistently visited the children (and had great visits with them), but she never completed the required substance-abuse treatment and started using fentanyl, which became her drug of choice. In September 2019, Mother was referred to Quality Counseling for substance-abuse treatment but was discharged in December. In February 2020, Mother was referred to Genesis Outreach, a transitional home for women recovering from drug and alcohol addiction. Although Genesis is a nine-month program, Mother stayed only two months before checking herself out. In November 2020, Mother was referred to the Bowen Center for substance-abuse treatment, but she didn't complete it either.

[5] In July 2021, DCS petitioned to terminate Mother's parental rights to the children. Mother returned to Genesis in September, when she was struggling with fentanyl, but left after just one month. The termination hearing was held on November 15 and 16. Mother appeared on the first day but not the second.

[6] Darci Collison was Mother’s Family Case Manager (FCM) starting in October 2019. She testified Mother’s housing had been unstable ever since she became the FCM. Mother had lived with her mother, at Harriet House and Genesis, in her car, and at hotels. FCM Collison counted seventeen housing changes for Mother. In addition, Mother had thirteen no-shows and ten refusals for drug screens in 2021 alone. FCM Collison said Mother’s last refusal was on October 20, when she claimed she had “overdosed in her car the week before” and didn’t want to be screened. *Id.* at 72.

[7] The guardian ad litem (GAL), Stephen Griebel, testified, believing termination was in the best interests of the children:

[Mother] has continued to use illegal substances including fentanyl which is a huge, huge concern. That . . . to me is a big reason why having children in her care would not be in their best interest. She’s living in motels. She’s not holding down a stable job. She’s not putting herself in a stable environment that would allow her to raise three (3) children wh[o] have needs.

Id. at 112.

[8] Mother testified on the first day of the hearing. She admitted she was an addict who struggled every day, hadn’t had a job since November 2020, and was living in a hotel. Mother said that in the early months of the CHINS case (when the children still lived with her), she had housing and used only marijuana. But Mother claimed things fell apart after the children were removed from her in August 2019. Since then, Mother admitted she hadn’t had stable housing and had started using fentanyl (including within the past thirty days).

[9] The trial court entered an order terminating Mother's parental rights to the children.

[10] Mother now appeals.

Discussion and Decision

[11] When reviewing the termination of parental rights, we don't 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 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).

[12] 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. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

[13] Mother makes one argument on appeal: she 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 making this determination, the trial court engages in a two-step analysis. First, the court must determine what conditions led to the child’s placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The court must judge the parent’s fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[14] Here, the children were found to be CHINS because of Mother’s drug use. Although Mother had success in the early months of the CHINS case, things

started to deteriorate in 2019, and the children were removed from her care due to her drug use. Around this time, Mother’s drug of choice transitioned from marijuana to the deadly and addictive fentanyl. Also around this time, Mother’s housing became unstable, and she lived in several places, including her car and hotels. Although Mother had multiple referrals for substance-abuse treatment (including residential programs), she didn’t complete any of them. She went to Harriet House in July 2019 but left after one month. She went to Genesis in February 2020 but left after two months. In September 2021—two months after the termination petitions were filed—Mother returned to Genesis but left after one month. At the termination hearing in November, Mother admitted she had used fentanyl within the past thirty days. The trial court sympathized with Mother’s addiction but emphasized she had “not availed herself of services to assist with the reunification with her children” “prior to the children’s removal and for over two years after their removal.” Appellee’s App. Vol. II p. 10. The evidence is sufficient to support the trial court’s conclusion that Mother’s habitual conduct shows there is a reasonable probability she will not remedy the conditions that resulted in the children’s removal and continued placement outside the home.

[15] Affirm

Crone, J., and Altice, J., concur.