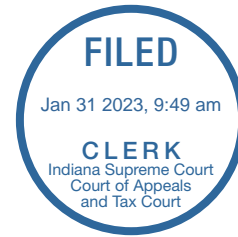


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
F.G. (Minor Child);

A.G. (Mother),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

January 31, 2023

Court of Appeals Case No.
22A-JT-2021

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause No.
34C01-2203-JT-88

Pyle, Judge.

Statement of the Case

- [1] A.G. (“Mother”) appeals the termination of the parent-child relationship with her daughter, F.G. (“F.G.”). Mother argues that there is insufficient evidence to support the termination. Concluding that there is sufficient evidence to support the termination, we affirm the trial court’s judgment.¹
- [2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationship.

Facts

- [3] The evidence and reasonable inferences that support the judgment reveal that Mother is the parent of F.G., who was born in October 2010. In December 2020, DCS Family Case Manager Zachary Cox (“FCM Cox”) received a report alleging that F.G. and her half-sibling, four-year-old R.G. (“R.G.”), were the victims of neglect. According to the report, Mother had used illegal substances and had overdosed at a convenience store while shopping with R.G. The clerk at the convenience store had contacted law enforcement, and an officer had revived Mother with Narcan. Mother’s appearance had been consistent with that of a long-term drug user.

¹ F.G.’s father voluntarily relinquished his parental rights.

- [4] After receiving this report, FCM Cox went to Mother’s home to speak to her and check on the children’s well-being. Mother’s brother answered the door, confirmed that Mother lived at the residence, and stated that Mother was not home. FCM Cox returned to Mother’s residence several times but was never able to speak with her. DCS subsequently removed F.G. from Mother’s home because of Mother’s drug use and placed F.G. with her paternal grandparents (“Paternal Grandparents”).²
- [5] Following F.G.’s removal, the trial court held a detention hearing. Mother appeared at the hearing and told FCM Cox that she “had taken a hit of a CBD pen and she may have overdosed on something that was in the CBD pen.” (Tr. Vol. 2 at 10). FCM Cox asked Mother to submit to a drug screen. Mother complied with FCM Cox’s request, and the drug screen was positive for methamphetamine.
- [6] Also in December 2020, DCS filed a petition alleging that F.G. was a child in need of services (“CHINS”) and transferred the case to DCS family case manager Patricia Cobb (“FCM Cobb”). Following a hearing, the trial court adjudicated F.G. to be a CHINS in February 2021. In March 2021, the trial court issued a dispositional order that required Mother to: (1) contact the DCS family case manager every week; (2) abstain from the use of illegal substances; (3) complete a parenting assessment and successfully complete all

² It appears that DCS also removed R.G. from Mother’s home; however, there is no additional information about R.G. in the record. This appeal concerns only F.G.

recommendations; (4) complete a substance abuse assessment and successfully complete all recommendations; (5) submit to random drug screens; and (6) attend scheduled visits with F.G.

- [7] At the time of the trial court's June 2021 case review, Mother had completed a substance abuse assessment and attended three counseling sessions. However, Mother had also tested positive for methamphetamine in January, April, and May 2021. In addition, Mother had failed to participate in home-based case management services, and she had not visited F.G. in five months.
- [8] During the summer of 2021, Mother failed to contact FCM Cobb every week and was unresponsive to FCM Cobb's attempts to contact her. Specifically, when FCM Cobb visited Mother's home, Mother did not answer the door, and when FCM Cobb telephoned Mother, Mother did not answer the telephone. Mother also failed to reply to FCM Cobb's letters, and when FCM Cobb sent Mother the dates of the child and family team meetings, Mother did not attend them.
- [9] FCM Cobb also contacted Mother's family members to see if they had seen or spoken with Mother. However, the family members told FCM Cobb that they had neither seen nor spoken with Mother. By August 2021, Mother had stopped attending counseling sessions and rarely submitted to court-ordered drug screens.
- [10] One month later, in September 2021, Mother submitted to a drug test and again tested positive for methamphetamine. Also in September 2021, the trial court

appointed CASA Ruth Lawson (“CASA Lawson”) to the case. Like FCM Cobb, CASA Lawson was not able to reach Mother at her home or by telephone.

- [11] In January 2022, Mother submitted to a drug screen and tested positive for methamphetamine and fentanyl. In February 2022, DCS transferred the case to family case manager Sandra Curry (“FCM Curry”), who was also unable to reach Mother.
- [12] In March 2022, DCS filed a petition to terminate Mother’s parental relationship with F.G. At the June 2022 termination hearing, FCM Cobb recommended the termination of Mother’s parental rights because she believed that Mother’s drug use had always been more important to Mother than her relationship with F.G. According to FCM Cobb, Paternal Grandparents, who planned to adopt F.G., had provided F.G. with the nurturing environment that she needed.
- [13] FCM Curry also recommended the termination of Mother’s parental rights. According to FCM Curry, F.G. had “waited long enough for a stable loving home that is free from illegal substance abuse[.]” (Tr. Vol. 2 at 26).
- [14] Lastly, CASA Lawson testified that F.G. had a parent-child bond with Paternal Grandparents. According to CASA Lawson, F.G.’s “physical, emotional, and psychological health would be at risk if she were to return to [Mother]’s care and custody.” (Tr. Vol. 2 at 33). CASA Lawson further testified that termination was in F.G.’s best interests.

[15] Following the hearing, in July 2022, the trial court issued a detailed eighteen-page order terminating Mother's parental rights. The trial court's order provides, in relevant part, as follows:

42. In the judgment of this Court, there is a reasonable probability that [Mother] will not be able to remedy the reasons for removal nor ever safely and adequately care for [F.G.].

* * *

45. [F.G.] was removed due to allegations of illegal substance abuse by Mother. The out of home placement has continued, as outlined above, due to Mother's inconsistency with drug screening, including numerous positive drug screens and an overall lack of progress in participation in reunification services including successfully completing substance abuse treatment. There is no indication that those circumstances have significantly changed in any positive way. What is clear from the evidence is that Mother has not made reunification a priority and has failed to demonstrate continued sobriety. Mother chose not to work with [DCS] and service providers towards reunification. When Mother did participate in substance abuse treatment briefly, she continued to test positive on random oral drug screens for [DCS].

46. For most of the CHINS case, Mother demonstrated that she will not put meaningful effort into remedying the reasons for involvement with [DCS] or [F.G.]'s continued removal. The Court finds that Mother's habitual pattern of conduct leaves a high probability of future neglect and deprivation of the child and further finds that the continuation of the parent-child relationship would undoubtedly put the child at risk.

50. The Court further finds by clear and convincing evidence that the continuation of the parent-child relationship[] between [F.G.] and [Mother] pose[s] a threat[-] being of [F.G.][.] Mother has failed to demonstrate an ability to parent [F.G.] safely or to provide her with the nurturing, stable, and appropriate care, and environment that she requires on a long-term basis[.]

51. The Court further finds by clear and convincing evidence that termination of the parent-child relationship[] between Mother and [F.G.] [is] in [F.G.]’s best interest[s] in that further efforts to reunite Mother and [F.G.] are unlikely to succeed. Throughout the CHINS case, Mother has shown sparse compliance, at best, with reunification efforts. Failure to terminate the parent-child relationship at this time would simply deny [F.G.] the stability and permanency to which she is entitled, and which has already been too long denied. It is in [F.G.]’s best interest to have permanency, not perpetual wardship and uncertainty.

(App. Vol. 2 at 57-58, 60-61).

[16] Mother now appeals.

Decision

[17] Mother argues that there is insufficient evidence to support the termination. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when

parents are unwilling or unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[18] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Further, in deference to the trial court's unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208. In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *K.T.K.*, 989 N.E.2d at 1229-30.

[19] A petition to terminate parental rights must allege:

(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.

[20] Mother first argues that the evidence is insufficient to prove that there is a reasonable probability that the conditions that resulted in F.G.'s removal or the reasons for placement outside Mother's home will not be remedied. However, we note that the trial court found that clear and convincing evidence also established that the continuation of the parent-child relationship posed a threat to F.G.'s well-being. INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. The trial court, therefore, needs only to find one of the requirements of this subsection by clear and convincing evidence. *See L.S.*, 717 N.E.2d at 209. "Standing alone, the finding that the parent-child relationship posed a threat to the well-being of the child[] satisfies the requirement listed in subsection (B)." *Id.* In other words, we need not reach Mother's argument related to INDIANA CODE § 31-35-2-4(b)(2)(B)(i).

[21] However, in light of Mother's constitutional right to raise her child, we choose to address her argument that the evidence is insufficient to show that there is a

reasonable probability that the conditions that resulted in F.G.'s removal or the reasons for placement outside Mother's home will not be remedied. In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.*

[22] Here, our review of the evidence reveals that F.G. was removed from Mother because of Mother's drug use. During the pendency of the proceedings, Mother continued to test positive for illegal drugs, including methamphetamine and fentanyl. In addition, Mother failed to contact the DCS family case managers every week and was unresponsive to their attempts to contact her. Further,

Mother failed to successfully complete any of the court-ordered services and did not regularly visit F.G. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in F.G.'s removal or the reasons for placement outside Mother's home will not be remedied.

[23] Mother also contends that there is insufficient evidence that the termination is in F.G.'s best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the child involved. *Id.* Central among these interests is the child's need for permanency. *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). Indeed, a child cannot wait indefinitely for her parent to work toward preservation or reunification. *Id.* Further, the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[24] Here, FCM Cobb, FCM Curry, and CASA Lawson all recommended the termination of Mother's parental rights. FCM Curry testified that F.G. had waited long enough for a stable loving home, and FCM Cobb testified that Paternal Grandparents, who planned to adopt F.G., had provided F.G. with the nurturing environment that she needed. In addition, CASA Lawson testified that the termination of Mother's parental rights was in F.G.'s best

interests. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in F.G.'s best interests. There is sufficient evidence to support the termination of Mother's parental relationship with F.G.

[25] Affirmed.

Bailey, J., and Bradford, J., concur.