

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.



ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Wieneke Law Office
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Assistant Section Chief, Civil
Appeals
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of W.N. (Minor Child)

and

M.W. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

April 19, 2022

Court of Appeals Case No.
21A-JT-2232

Appeal from the LaGrange Circuit
Court

The Honorable William R. Walz,
IV

Trial Court Cause No.
44C01-2006-JT-5

Bradford, Chief Judge.

Case Summary

[1] M.W. (“Mother”) is the biological mother of W.N. (“Child”). The Department of Child Services (“DCS”) became involved with Mother and Child on December 20, 2017. Mother subsequently admitted that Child was a child in need of services (“CHINS”). The juvenile court ordered Mother to complete certain services, most notably to refrain from using drugs. Although Mother managed to achieve short periods of sobriety, each time she relapsed and again tested positive for drugs. Eventually, on June 15, 2020, DCS petitioned to terminate Mother’s parental rights to Child. Following an evidentiary hearing, the juvenile court granted DCS’s petition and issued an order terminating Mother’s parental rights to Child. On appeal, Mother challenges the sufficiency of the juvenile court’s order. We affirm.

Facts and Procedural History

[2] Child was born to Mother on January 29, 2016. On December 20, 2017, DCS received a report “requesting immediate assistance because [Mother] was going to be arrested due to, uh, possession of drugs and an outstanding warrant, and there was nobody left to care for [Child].” Tr. Vol. II p. 188. At the time, Mother tested positive for methamphetamine and was found to be in possession of “a bag of methamphetamine in a prescription bottle [] with her name on it.”

Tr. Vol. II p. 190. DCS removed Child from Mother's care and took her into custody after determining that there were no relatives available to take her.

[3] DCS filed a petition alleging Child to be a CHINS on or about December 21, 2017. On June 24, 2018, following an admission by Mother, the juvenile court adjudicated Child to be a CHINS. Also on January 24, 2018, the juvenile court ordered Mother, *inter alia*, to: complete any services recommended by either the Family Case Manager ("FCM") or other service provider, maintain suitable and stable housing, secure and maintain a legal and stable source of income, refrain from using any illegal controlled substance, obey the law, complete a substance-abuse assessment and follow and successfully complete all treatment recommendations, submit to random drug screens, and attend all scheduled visitation with Child.

[4] On April 11, 2018, the juvenile court conducted a periodic case review after which it found that "Mother was recently released from incarceration and has begun her services." Ex. Vol. I p. 34. However, over the course of the next two and a half years, the juvenile court found on seven occasions that Mother had failed to fully comply with Child's case plan:

- Following a June 20, 2018 review hearing, the juvenile court found that Mother had only "partially complied" with Child's case plan, noting that Mother had recently "relapsed." Ex. Vol. I p. 37.
- Following a September 19, 2018 permanency hearing, the juvenile court found that Mother had not complied with

Child's case plan, noting that Mother had relapsed and tested positive for drugs in July and September.

- Following a May 29, 2019 review hearing, the juvenile court found that Mother had not complied with Child's case plan, noting that Mother had "missed about 50% of her appointments with her individual therapist which puts her at risk [of] having the services terminated" and had recently relapsed. Ex. Vol. I p. 50.
- Following a May 20, 2020 permanency hearing, the juvenile court found that Mother had not complied with Child's case plan, noting that "Mother has only attended two (2) group sessions in the last week and no individual counseling. Mother has also only passed 47% of her drug screens. There were 23 administered, [M]other passed 11, failed 12, and no showed 5 times. Mother has only attended 61% of her visits." Ex. Vol. I pp. 59–60.
- Following a September 2, 2020 review hearing, the juvenile court found that Mother had not complied with Child's case plan, noting that Mother had not enhanced her ability to fulfill her parental obligations; had recently relapsed and tested positive for methamphetamine; had attended only 36% of her outpatient substance-use group counseling sessions, only 0.08% of her outpatient substance-use individual counseling sessions, and only 52% of her individual counseling sessions; and had passed only 69% of her drug screens.
- Following a November 4, 2020 permanency hearing, the juvenile court found that Mother had not complied with Child's case plan, noting that Mother had been inconsistent with her services; had recently relapsed and tested positive for methamphetamine; had attended only 34% of her outpatient

substance-use group counseling sessions, only 0.15% of her outpatient substance-use individual counseling sessions, and only 59% of her individual counseling sessions; and had passed only 52% of her drug screens.

- Following a November 13, 2020 review hearing, the juvenile court reiterated its findings from the November 4, 2020 permanency hearing, finding that Mother had not complied with the case plan and was inconsistent with services.

[5] At some point, Child's permanency plan was amended to include a concurrent plan that would allow for termination of Mother's parental rights and adoption. On June 15, 2020, DCS filed a petition to terminate Mother's parental rights to Child. Prior to the evidentiary hearing in this case, a CHINS case was opened involving Mother and a different child after Mother admitted to using methamphetamine the day before giving birth to the other child on November 30, 2020. The juvenile court conducted an evidentiary hearing on January 29 and February 5, 2021. In addition to evidence relating to Mother's failure to refrain from using drugs and to successfully complete services, the juvenile court heard evidence relating to Mother's drug-related criminal history. On March 26, 2021, the juvenile court issued an order terminating Mother's parental rights. On October 21, 2021, this court granted Mother permission to file a belated appeal.

Discussion and Decision

[6] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005).

Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[7] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[8] In deference to the juvenile court’s unique position to assess the evidence, we set aside the juvenile court’s findings and judgment terminating a parent-child

relationship only if they are clearly erroneous. *Id.* “A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it.”

Id. A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[9] In order to support the termination of Mother’s parental rights to Child, DCS was required to prove the following:

- (A) that one (1) of the following is true:
 - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree....
 - (iii) The child has been removed from the parent ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services....
- (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).

[10] Indiana Code section 31-35-2-8(c) provides that in issuing an order terminating a parent’s parental rights, a juvenile court “shall enter findings of fact that support” the court’s order. In challenging the juvenile court’s order, Mother contends that “the juvenile court’s brief order with only a few factual findings was so deficient Mother is unable to determine what evidence the court relied upon and whether that evidence supported the termination of Mother’s parental rights.... Remand is necessary to require the [juvenile] court to provide adequate findings of its decision.” Appellant’s Br. pp. 6–7. We disagree.

[11] The juvenile court’s order reads, in relevant part, as follows:

5. It was established by clear and convincing evidence that the allegations of the petition are true in that:

a. The child has been removed from her parents for at least six (6) months under a dispositional decree of the LaGrange Circuit Court, dated January 24th, 2018 under cause number 44C01-1712-JC-00068.

and

The child has been removed from her parents and has been under the supervision of the Department of Child Services for at least fifteen (15) of the last twenty-two (22) months.

b. There is a reasonable probability that:

The conditions that resulted in the child’s removal or the reasons for the placement outside the parent’s home will not be remedied in that:

Credible sworn testimony given by Nichole Johnson-Smith, Director of LaGrange Northeastern Center, that [Mother] has been referred to the Northeastern

Center for 2.5 years for her substance abuse issues during which she has not completed any of her services there.

Credible sworn testimony given by John Boyanowski with Lifeline Youth and Family Services who supervised visits between [Mother] and [Child]. Mr. Boyanowski testified that the visits that did occur were mostly good. However, Mother was “totally inconsistent over the last few years,” and she missed visits and cancelled others. [Child] would become withdrawn after failed trial home visits. Over a 3 year period Father had 9 opportunities for overnight visits and Mother has had 6. Mother has had a frequent need for stable housing.

Credible sworn testimony given by Noble County FCM Timothy Harkness who is assigned to Mother’s new open case in Noble County regarding infant born November of 2020. Harkness testified that Mother used methamphetamine during pregnancy and baby’s meconium tested positive for methamphetamine.

Credible sworn testimony given by Alicia Halsey, therapist previously working through SCAN and more recently Dr. Goldstein. Ms. Halsey has worked therapeutically with [Child] since June of 2020. She testified that [Child] needs to feel safe and have stability. [Child] has reported being scared of Mother’s current boyfriend who is the father of recently born infant. Therapist Halsey recommends Termination and opines that [Child’s] emotional wellbeing could be threatened by being returned to Mother.

Credible sworn testimony given by Foster Parent Maria Miller. Ms. Miller testified that when [Child]

was first placed with her she was unusually quiet and reserved. [Child] has been placed with her since December of 2017, with the exception of November 27, 2019 through December 10, 2019 for a failed trial home visit with Mother. After which, [Child] suffered from nightmares, was extremely clingy and had urinary and fecal “accidents.” Ms. Miller requested therapy for [Child]. Ms. Miller has several children living with her, has family living next door and would adopt [Child] if termination ordered.

Credible sworn testimony given by LaGrange County Family Case Manager, Cory Peacock. FCM Peacock has observed and outlined the extensive pattern of substance abuse and relapses by Mother during the duration of the underlying CHINS case. FCM Peacock noted [Child’s] growth since placed with Ms. Miller but that [Child] continues to need therapy to process traumatic events, that [Child] is scared of Mother’s current boyfriend and reacts negatively to him and boyfriend has stated that he is not going to work with FCM Peacock. FCM Peacock recommends termination and Adoption by Maria Miller.

Credible sworn testimony given by CASA Kelly Wilkinson who has visited with child in many locations during the duration of the case. She recommends termination because Mother lacks stability necessary for [Child], [Child] fears Mother’s boyfriend, the trial home visits have failed, and Mother has ongoing substance abuse issues with many relapses over the last 3 years most recently testing positive for methamphetamine right before giving birth to [Child’s] youngest sibling last November.

c. Termination is in the best interest of the child in that:

All testimony given has been consistent that Mother has recurring substance abuse issues with frequent relapses[,] and she has not successfully completed any treatment programs since [Child] has been out of her home for the past 37 months. Mother has not had stable finances and has been homeless at times and barely able to maintain housing the remaining times since the underlying case started. Mother reported being a victim of [d]omestic violence in [Child's] presence as perpetrated by current boyfriend and is back residing with him.

d. The Department of Child Services has a satisfactory plan for the care and treatment of the child, which is:

Adoption by Maria Miller with whom [Child] has lived and made progress becoming less withdrawn in therapy while becoming healthier and more outgoing over the last 37 months.

IT IS ORDERED that the parent-child relationship between [Child], the child, and ... Mother, be terminated, and all rights, powers, privileges, immunities, duties and obligations, and all other rights pertaining to that relationship are hereby permanently terminated.

Appellant's App. Vol. II pp. 79–81.

[12] The juvenile court's order establishes that Child had been removed from Mother's care for longer than the required time period pursuant to a dispositional decree. As for the factors relating to Child's removal from and continued placement outside of Mother's care, the order cites to testimony of various case workers and service providers, stating each individual's name and their relation to the case before detailing their relevant testimony. This cited

testimony establishes that Mother has failed to successfully complete services; has failed to refrain from using drugs, most notably methamphetamine; was inconsistent with visitation; and has failed to obtain a safe and stable home environment. The order also details testimony relating to Child's best interests, specifically her need for permanency and stability, and establishes that DCS has a satisfactory plan for Child's future care. Furthermore, while the juvenile court's order does not explicitly state that Child is a minor or the child of Mother, both facts are clearly established in the order and the record on appeal.

[13] In challenging the sufficiency of the juvenile court's findings, Mother does not argue that the findings are inaccurate or claim that they are not supported by the record. Instead, she asserts that the court's findings are insufficient because the findings "are confusing, vague, and conclusory in nature." Appellant's Br. p. 10. Contrary to Mother's assertion, we conclude that the juvenile court's order is sufficiently detailed so as to inform the parties of the basis of its decision. We further conclude that the juvenile court's order demonstrates that termination of Mother's parental rights was warranted, as DCS sufficiently proved each of the requisite factors. To the extent that Mother argues otherwise, Mother's argument amounts to a request that we reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[14] The judgment of the juvenile court is affirmed.

Najam, J., and Bailey, J., concur.