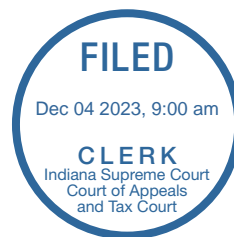


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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
J.G. and W.G. (Minor Children)
and C.G. (Mother) and L.G.
(Father):

C.G. (Mother) and
L.G. (Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

December 4, 2023

Court of Appeals Case No.
23A-JT-1402

Appeal from the
Adams Circuit Court

The Honorable
Chad E. Kukelhan, Judge

Trial Court Cause Nos.
01C01-2212-JT-29
01C01-2212-JT-30

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] C.G. (“Mother”) and L.G. (“Father”) (collectively, “Parents”) appeal the termination of their parental rights to their children. We affirm.

Facts and Procedural History

- [2] Parents are the biological parents of J.G., born in September 2015, and W.G., born in December 2018. The Department of Child Services (DCS) first became involved with the family in January 2021 because of a domestic-violence incident between Parents while the children were present. Father was charged with Level 6 felony domestic battery, and the trial court issued a no-contact order between Parents. Father violated the no-contact order and was later charged with invasion of privacy. He pled guilty to both charges and was sentenced to one year of work release and one year of probation. In August 2021, Father admitted using methamphetamine and was ordered to serve the rest of his sentence in jail.

- [3] One night in September, while Father was still incarcerated, the children were outside the house at a late hour without supervision. Once Mother was located, she appeared under the influence. Thereafter, DCS filed a petition alleging the children were in need of services (CHINS), and the trial court issued an emergency custody order placing the children with their paternal aunt. In November, the trial court found the children to be CHINS and ordered Parents to, among other things, submit to random drug screens, complete recommended substance-abuse treatment, attend visitation, and not commit any acts of domestic violence.
- [4] Over the next year, Parents partially complied with the case plan. They attended supervised visits with the children, but a service provider had to take over supervision after Father “head butted” Mother at one visit and Parents were yelling at each other during another. Appellants’ App. Vol. II p. 57. Both Parents underwent substance-abuse assessments but didn’t complete the recommended therapy. Mother did complete inpatient rehabilitation but relapsed after treatment. She often tested positive for drugs or missed her screens. Father was randomly drug tested as part of his probation and at first remained drug-free, but he later relapsed. He participated in a court-ordered domestic-violence counseling program, but while he was in the middle of the program, there was an incident in which he hit Mother in the face and gave her a black eye. Family Case Manager (FCM) Kim Rumschlag referred Parents to couple’s therapy for their domestic-violence issues, but they never attended.

[5] In December 2022, DCS petitioned to terminate Parents' parental rights. The termination hearing was held in May 2023. FCM Rumschlag testified that Parents hadn't maintained regular contact with her, didn't complete all the services DCS referred, and hadn't improved from the services they did complete. She also stated that Father had refused to submit to drug screens and told her he would no longer do anything for DCS, and Mother hadn't submitted to a drug screen since February. FCM Rumschlag noted that the children have a bond with Parents and that Parents have maintained employment and appropriate housing, but she also explained that the children were doing well in their current placement. She ultimately recommended termination because of Parents' continued substance abuse, domestic-violence incidents in the home, and Parents' failure to address their underlying mental-health concerns.

[6] Social worker Heidi Krause testified that, on a referral from DCS, she evaluated Mother in January 2023 and recommended her for individual and couple's counseling, group therapy, and intensive outpatient treatment. Krause said Mother never attended couple's counseling or group therapy, didn't start individual counseling until April, and began intensive outpatient treatment just a week before the termination hearing.

[7] Megan Close, the children's Guardian Ad Litem (GAL), also recommended termination. She testified that the children needed permanency and that termination is in their best interests. She expressed concerns about Parents' substance abuse, domestic violence, and their failure to participate in or benefit

from court-ordered services, concluding that “it’s dangerous for the children to be around their parents unsupervised.” Tr. p. 65.

[8] In June 2023, the trial court entered an order terminating Parents’ parental rights.

[9] Parents now separately appeal.

Discussion and Decision

[10] Parents argue there is insufficient evidence to meet 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).

[11] 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 trial court finds the allegations are true, the court “shall terminate the parent-child relationship.”

I.C. § 31-35-2-8(a).

[12] Mother and Father each challenge the trial court’s decision on different grounds, which we address in turn.

I. The trial court did not err in concluding there is a reasonable probability that Father will not remedy the conditions that led to the children’s removal and continued placement outside the home

[13] Father challenges the trial court’s determination that there is a reasonable probability that the conditions resulting in the children’s removal and continued

placement outside the home will not be remedied. In making such a determination, the trial court first identifies what conditions led to removal, and then it determines whether there is a reasonable probability that those conditions will not be remedied. *K.T.K.*, 989 N.E.2d at 1231. This second step requires the court to judge a parent’s fitness at the time of the termination proceeding, considering 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. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). The court may consider, among other things, the parent’s criminal history, drug and alcohol abuse, and response to services offered by DCS. *In re A.D.S.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*.

[14] The children were removed and remained outside the home due to Parents’ continued substance abuse and domestic violence. Along with the January 2021 domestic battery, Father committed domestic violence against Mother while he was in the middle of a domestic-violence counseling program. He “head butted” Mother during a supervised visit with the children, and despite FCM Rumschlag’s referral for couple’s therapy to address the domestic-violence issue, Parents never attended. Father was also referred for individual counseling after his court-ordered substance-abuse assessment, but he did not attend. He relapsed while on probation for his domestic-battery case and has refused to participate in random drug screens since getting off probation. He also has been inconsistent in attending visitation and told FCM Rumschlag he is “done with DCS.” Appellants’ App. Vol. II p. 61.

[15] Despite his noncompliance with the case plan, Father claims “the court neglected to adequately acknowledge the constructive strides he had taken to transform his life for the betterment of himself and his children.” Father’s Br. pp. 7-8. But this is merely a request for us to reweigh the evidence, which we will not do. *A.D.S.*, 987 N.E.2d at 1157-58. The trial court was within its discretion to give more weight to Father’s habitual patterns of substance abuse and domestic violence than to his improvements. *In re A.J.*, 881 N.E.2d 706, 716 (Ind Ct. App. 2008), *trans. denied.*; see *E.M.*, 4 N.E.3d at 643 (“Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.”). The evidence supports the trial court’s conclusion that there is reasonable probability Father will not remedy the conditions that resulted in the children’s removal and continued placement outside the home.¹

II. Mother has failed to show the trial court erred in concluding that termination is in the children’s best interests

[16] Mother only challenges the trial court’s conclusion that termination is in the best interests of the children. In determining whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *In re*

¹ Father also challenges the trial court’s conclusion that there is a reasonable probability that 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.*

Ma.H., 134 N.E.3d 41, 49 (Ind. 2019), *reh'g denied*. The trial court must subordinate the interests of the parents to those of the child. *In re A.B.*, 887 N.E.2d 158, 168 (Ind. Ct. App. 2008). A child's need for permanency is a "central consideration" in determining the best interests of a child. *K.T.K.*, 989 N.E.2d at 1235. "Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification." *Ma.H.*, 134 N.E.3d at 49 (quotation omitted). We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence that 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.*, 987 N.E.2d at 1158.

[17] Here, FCM Rumschlag recommended termination due to continued concerns about Parents' substance abuse and domestic violence as well as their failure to address their underlying mental-health issues. She specifically expressed concern about Mother using drugs in the home. GAL Close testified that termination is in the children's best interests for many reasons, including their ages, how long they had been in the system, and their need for permanency. As to Mother specifically, GAL Close expressed concern about her continued struggle with substance abuse and failure to address her trauma as a victim of domestic violence. *See* Tr. p. 68 ("[I]f it happens again, is she going to self-report or is she not and how is she going to protect her children if she hasn't gone through this counseling to give her the proper tools[?]"). As discussed above, there is evidence of a reasonable probability that the conditions resulting

in the children's removal will not be remedied, which Mother does not challenge.

[18] Mother likens this case to *In re G. Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh'g denied*. There, our Supreme Court reversed the termination of an incarcerated mother's parental rights, concluding the child's need for permanency (among other reasons) was insufficient to prove termination was in the child's best interests. The Court found no evidence that the child would be harmed by remaining in his placement until he could be reunited with his mother because her release from prison was imminent, and she was committed to maintaining a parent-child relationship and participating in personal-improvement programs.

[19] Here, Mother asserts that "her substance use disorder is a prison for her," but "[i]f she can break free through individual counseling and intensive outpatient treatment, she will be in a position to parent her children." Mother's Br. p. 15. But Mother had nearly eighteen months to complete these programs and unfortunately has been unable to "break free." After her first referral for individual counseling, she didn't attend consistently and eventually stopped going. When she was referred for individual counseling and intensive outpatient treatment in January 2023, she didn't start the programs until several months later, just before the termination hearing. She also completed inpatient treatment but relapsed after her release. Unlike the mother in *G. Y.*, we have no indication of when Mother will become fit to parent because, despite participating in some services, she showed no improvement in her substance-abuse problems throughout the CHINS and termination proceedings. As our

Supreme Court has noted, “simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change[.]” *Ma.H.*, 134 N.E.3d at 50. The evidence supports the trial court’s conclusion that termination is in the children’s best interests.

[20] Affirmed.

Bradford, J., and Brown, J., concur.