

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
D.L. and C.L.;

A.L. (Mother),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

December 15, 2023

Court of Appeals Case No.
23A-JT-994

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause Nos.
34C01-2212-JT-433
34C01-2212-JT-434

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] A.L. (“Mother”) appeals the termination of the parent-child relationships with her two sons, C.L. (“C.L.”) and D.L. (“D.L.”) (collectively “the children”). She argues that there is insufficient evidence to support the terminations. Concluding that there is sufficient evidence to support the terminations, 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 relationships.

Facts

[3] The facts most favorable to the terminations reveal that forty-year-old Mother is the parent of C.L., who was born in January 2011, and D.L., who was born in September 2012. In December 2021, the Department of Child Services (“DCS”) received a report, which alleged that the children were victims of neglect because Mother had been charged with multiple felonies and misdemeanors, including Level 6 felony neglect of a dependent, Level 6 felony maintaining a common nuisance, Level 6 felony unlawful possession of a

¹ C.L.’s father is not participating in this appeal, and D.L.’s father voluntarily relinquished his parental rights.

syringe, two counts of Level 6 felony possession of a legend drug, Class A misdemeanor possession of a controlled substance, Class B misdemeanor possession of marijuana, Class C misdemeanor possession of paraphernalia, and two counts of Class A misdemeanor possession of a controlled substance. The report also alleged that the children had excessive unexcused absences from school. When DCS family case manager Andrew Cook (“FCM Cook”) went to Mother’s home to speak with her about the neglect allegations, FCM Cook noticed that an eviction notice had been posted on the home’s front door. In addition, the family’s belongings had been placed outside the home. That same day, FCM Cook went to the children’s school and learned that the children were not present at school and that Mother had not contacted the school with a reason for the children’s absences.

[4] In January 2022, Mother was arrested on the multiple pending charges and incarcerated at the county jail. FCM Cook went to the jail to speak with Mother about the neglect allegations. Mother denied using drugs and told FCM Cook that she had prescriptions for the drugs that had been found in her home. FCM Cook asked Mother to submit to a voluntary drug screen; however, Mother refused. Mother also told FCM Cook that the children’s fathers had never been involved in the children’s lives and did not live in Indiana. In addition, Mother told FCM Cook that she “would be in jail for a while as she did not have money to bond out[]” and that she had left the children in the care of a friend, Kristina Atyeo (“Atyeo”). (Ex. Vol. 3 at 19). The following day, FCM Cook went to Atyeo’s home. Atyeo told FCM Cook

that she had only known Mother for a few months and that she was not able to care for the children on a long-term basis.

- [5] A week later, Shawwna Weaver (“Weaver”), another of Mother’s friends, informed FCM Cook that Atyeo had “signed the [children] over to her.” (Ex. Vol. 3 at 20). Weaver further told FCM Cook that she was willing to care for the children on a long-term basis and that she knew “she would need to get the [children] back into school.” (Ex. Vol. 3 at 20).
- [6] At the end of January 2022, DCS filed petitions alleging that the children were children in need of services (“CHINS”). In March 2022, the trial court held a fact-finding hearing and adjudicated the children to be CHINS. Following an April 2022 dispositional hearing, the trial court issued a CHINS dispositional order that required Mother to: (1) maintain contact with the DCS family case manager and service providers; (2) participate in a substance abuse assessment and follow the assessor’s recommendations; (3) abstain from the use of illegal drugs; (4) submit to random drug screens; (5) attend supervised visits with the children; (6) obtain clean, suitable, and stable housing for the children; and (7) participate in Family Recovery Court (“Family Recovery Court”).
- [7] Mother initially complied with the CHINS dispositional order by participating in Family Recovery Court services, including therapy, home-based case management, and supervised visits with the children. However, her drug screens were positive for illegal substances.

- [8] Three months later, at the time of the July 2022 review hearing, Mother was no longer “in good standing” with Family Recovery Court. (Tr. Vol. 2 at 14). Mother was homeless and had not maintained contact with DCS family case manager Charlotte Hall (“FCM Hall”). In addition, the children, who were still in Weaver’s care, had been physically fighting with each other and had not been attending school. Further, C.L. had repeatedly run away from Weaver’s home.
- [9] In August 2022, Weaver’s physician contacted FCM Hall and told her that Weaver was ill and would no longer be able to care for the children. FCM Hall subsequently placed the children together in foster care.
- [10] At the time of the October 2022 review hearing, Mother had been discharged from Family Recovery Court due to her lack of attendance and participation. Mother had inconsistently submitted drug screens and had tested positive for methamphetamine. Further, although Mother had met with a home-based case manager, Mother had not followed through with identified action steps such as completing housing applications. In addition, although FCM Hall had attempted to help Mother get into the Volunteers of America Fresh Start Recovery Program, Mother had failed to contact Volunteers of America to begin the program. Mother had also failed to maintain regular contact with FCM Hall and had failed to provide FCM Hall with information regarding where Mother was living. Mother had only participated in one supervised telephone call with the children in the previous three months.

- [11] Also, at the time of the October 2022 review hearing, the children's behavior had started to improve while in foster care. The children were not physically fighting with each other as frequently, and they were consistently attending school. In addition, the children had become attached to their foster mother.
- [12] Following the October 2022 review hearing, Mother stopped participating in services and submitting to drug screens. In addition, Mother's home-based case manager discharged Mother from services. Further, Mother had not inquired about visiting the children. Mother subsequently told FCM Hall that Mother was living with Weaver; however, FCM Hall was unable to contact Mother at Weaver's home on a consistent basis.
- [13] In December 2022, DCS filed petitions to terminate Mother's parental relationships with the children. Shortly thereafter, FCM Hall told Mother that she could still participate in services and work towards reunification with the children. Mother subsequently submitted to four drug screens, which were all positive for illegal substances.
- [14] Mother failed to attend the March 2023 termination hearing; however, counsel represented her at the hearing. The trial court heard the facts as set forth above at the hearing. In addition, FCM Hall testified that Mother had not visited the children since July 2022. According to FCM Hall, Mother had made no effort to abstain from the use of illegal drugs or to maintain bonds with the children. FCM Hall further testified that termination was in the children's best interests and that the plan for the children was foster parent adoption. CASA Courtney

Westfall (“CASA Westfall”) testified that she had attempted to contact Mother several times but had been unable to reach her. CASA Westfall also testified that termination was in the children’s best interests.

[15] Following the hearing, in April 2023, the trial court issued two separate orders terminating Mother’s parental relationships with the children. The order in D.L.’s case provides, in relevant part, as follows:

26. Throughout this case, Mother has failed to meaningfully engage in reunification services. Mother has refused to maintain consistent contact with DCS, let alone meaningfully participate in any kind of drug treatment or rehabilitation to address her substance abuse issues. In addition to the ongoing substance abuse issues, Mother has continued to display an inability to maintain a stable living environment or contact number. Mother has not visited with her Children in nearly a year, was discharged from Family Recovery Court for her refusal to comply with the terms of the program and has failed to substantially engage in services to remedy any of the reasons the Child was removed. Overall, Mother has made no progress in remedying the reasons for removal and has demonstrated no effort in maintaining a relationship with her Child.^[2]

(App. Vol. 2 at 69).

[16] Mother now appeals.

² This finding is nearly identical to Finding Number 17 in C.L.’s termination order. *See* Appendix Volume 2 at 152.

Decision

[17] Mother argues that there is insufficient evidence to support the termination of her parental relationships with the children. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* at 1188. Termination of the parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.*

[18] Before an involuntary termination of parental rights may occur, DCS is required to allege and prove, 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. v. Indiana Department of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[19] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re Involuntary Termination of Parent-Child Relationship of R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[20] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). "This deference recognizes a trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record." *Id.*

[21] Here, Mother argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not

be remedied; and (2) a continuation of the parent-child relationships poses a threat to the children's well-being. However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not be remedied.

[22] In determining whether the conditions that resulted in the children'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, 642-43 (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.* at 643. 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.* DCS need not rule out all possibilities of change. *In re Involuntary Termination of the Parent-Child Relationship of Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). Rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *Id.*

[23] Here, our review of the evidence that supports the judgment reveals that DCS removed the children because of Mother's drug use and unstable housing. At the time of the termination hearing, Mother had not completed any services. She tested positive for illegal substances, including methamphetamine, throughout the pendency of the CHINS proceedings. In addition, Mother never obtained stable housing. Further, at the time of the termination hearing, Mother had not visited the children in eight months. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied.

[24] Affirmed.

Tavitas, J., and Foley, J., concur.