

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of B.W. (Minor Child), and J.W. (Mother),
Appellant-Defendant,

v.

Indiana Department of Child Services,
Appellee-Petitioner.

April 29, 2022

Court of Appeals Case No.
21A-JT-2693

Appeal from the Jennings Circuit Court

The Honorable Bruce MacTavish,
Special Judge

Trial Court Cause No.
40C01-2104-JT-10

Brown, Judge.

[1] J.W. (“Mother”) appeals the involuntary termination of her parental rights to her child, B.W. We affirm.

Facts and Procedural History

[2] Mother and J.W. (“Father,” and collectively with Mother, “Parents”) are the parents of B.W., who was born on June 18, 2019.¹ The first involvement of the Indiana Department of Child Services (“DCS”) with the family began at the child’s birth when B.W.’s umbilical cord blood tested positive for THC. In September and October 2018, DCS assessed two additional reports with allegations of substance abuse and domestic violence between Parents.

[3] On December 26, 2019, DCS received a report alleging B.W. to be a victim of abuse or neglect as Father was arrested in a motel room where he and a partner were actively smoking methamphetamine. The child was found in the motel room and taken to the emergency room to have a persistent cough evaluated. Mother went to the hospital, appeared under the influence, and admitted to recent amphetamine use.

[4] On December 27, 2019, DCS filed a petition alleging B.W. to be a child in need of services (“CHINS”). Mother admitted that B.W. was a CHINS. On January 14, 2020, the court adjudicated B.W. to be a CHINS. On February 27,

¹ Father does not appeal the termination of his parental rights.

2020, the court entered dispositional orders and orders for parental participation.

- [5] On April 23, 2021, DCS filed a petition for involuntary termination of the parent-child relationship between Mother and B.W. On October 25, 2021, the court held a hearing. The court heard testimony from Family Case Manager Michelle Shepherd (“FCM Shepherd”), Guardian ad litem Jess Gibson (“GAL Gibson”), Mother’s mother, and Mother.
- [6] On November 30, 2021, the court entered an order terminating Parents’ parental rights. It found that there was a reasonable probability that the conditions which resulted in the child’s removal or the reasons for placement outside the home of the Parents will not be remedied, continuation of the parent-child relationship posed a threat to the child’s well-being, termination of parental rights was in the child’s best interests, and there was a satisfactory plan for the care and treatment of the child.

Discussion

- [7] Mother concedes that there was a reasonable probability that the conditions which resulted in the child’s removal or the reasons for placement outside the home will not be remedied and that continuation of the parent-child relationship posed a threat to the child’s well-being. Mother disputes only the trial court’s conclusion that termination of the parent-child relationship was in B.W.’s best interest. She points to her and her mother’s testimony and argues that her viewpoint on substance use changed during her incarceration, she did

not want to return to her lifestyle, and she became actively involved in efforts to maintain sobriety. She also asserts that she did everything she could while incarcerated to address her addiction and recovery.

[8] In order to terminate a parent-child relationship, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the

evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[10] While Mother concedes that DCS proved by clear and convincing evidence that there was a reasonable probability that the conditions which resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied, we find it helpful to discuss the court’s findings and conclusion in addressing Mother’s argument regarding the child’s best interests. The court’s order terminating Mother’s parental rights found:

3. Mother and Father were both referred for substance abuse assessments in January 2020 because both Mother and Father admitted to a significant history of past substance abuse as well as current use at the time.

4. Mother completed her assessment on or about January 7, 2020. She was recommended for individual therapy, individual outpatient substance abuse treatment (hereinafter “IOP”), self-help classes, and medication management.

5. FCM Shepherd offered to refer these services for Mother; however, Mother refused and informed FCM Shepherd that she would undertake the services on her own.
6. Mother began IOP shortly after her substance abuse assessment. Her attendance was consistent at first; however, she stopped attending by the end of February 2020 after starting a job. She cited transportation issues as the reason for her lapse in attendance.
7. After that, Mother never consistently attended or completed any program of substance abuse treatment.
8. Mother was also referred for Home Based Case Management in order to assist her in obtaining and maintaining stable housing and employment.
9. Mother initially refused to attend this service. FCM Shepherd then arranged for the program to be addressed at supervised visits, but, even then, Mother refused to engage in the service.
10. Mother did not maintain stable housing throughout the case. There were multiple periods of homelessness and of Mother residing in a tent. She lived in an apartment for approximately 6 months but was eventually evicted. At other times, she resided with her Father, but she was asked to leave the home.
11. Mother did not obtain or maintain a stable source of income throughout the length of the case.
12. Mother did not remain sober throughout the length of the case. She submitted to eighteen total drug screens. Of those, three were positive for only methamphetamine, six were positive for methamphetamine and THC, three were positive for only THC, and six were negative. Her most recent drug screen was given on July 10, 2020 and it was positive for methamphetamine and THC.

13. There were many times where Mother would refuse to drug screen or would no-show a request for a drug screen.

14. Mother was authorized to have supervised visitation after the child was removed. Mother generally attended visitations consistently. However, there were some concerns during the visitations. Mother frequently did not bring supplies for the child, and she often had to rely on the visit supervisor to understand the child's cues in terms of food and diapering issues.

15. Mother has current legal issues that impact her ability to be a stable and effective parent for the child. At the time of the hearing, Mother was incarcerated in the Decatur County Jail and anticipated being released before the end of the year. However, Mother has an active warrant out of Johnson County, Indiana and an active warrant out of Kenton County, Kentucky.

* * * * *

32. Due to Mother and Father's disengagement from the case, concerns for their continued sobriety, inconsistent visitation, and lack of progress toward dispositional goals a concurrent permanency plan of Adoption was added to the case at the permanency hearing on April 12, 2021.

33. FCM Shepherd discussed what this meant and what would be expected with both Mother and Father.

34. After the concurrent permanency plan was added, neither Mother nor Father engaged in services or reengaged in the case.

35. As of the dates of the hearings for Father and Mother, neither could provide proof of consistent participation in or completion of any of the dispositional orders.

* * * * *

39. Mother has not proven that she can provide the child with a safe, secure, and sober living environment.

40. Mother has not maintained a home throughout the length of the case that would be suitable for a child. She also has not availed herself of the services necessary to obtain one.

41. Mother has not shown that she can remain free of criminal activity.

42. Mother has not remained sober for the length of the case and has not availed herself of the services necessary to obtain and maintain that sobriety.

* * * * *

44. Parents' lack of engagement with the child has negatively affected the bond between them.

* * * * *

46. Mother and Father have been given sufficient time to obtain sobriety and stability and prove they are able and willing to be the parent that the child needs. Mother and Father have not done that, and it would be detrimental to the child to keep the case open any longer. The child deserves the permanency the adoption will bring.

Appellant's Appendix Volume II at 29-32.

[11] To the extent Mother does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*. In light of the unchallenged findings, the evidence set forth above and in the record, and Mother's concession, we cannot say the trial court clearly erred in finding a

reasonable probability exists that the conditions resulting in the child's removal and the reasons for placement outside Mother's care will not be remedied.

[12] With respect to Mother's challenge to the trial court's finding that termination of the parent-child relationship is in the best interests of the child, we note that in determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a 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. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[13] The record reveals that FCM Shepherd testified that B.W. "specifically needs stability." Transcript Volume II at 23. She testified that she believed the termination of the parent-child relationship was in B.W.'s best interest "[b]ecause despite exceptional efforts [Mother] was not able to resolve her substance abuse issues, her mental health issues, and her employment and or income." *Id.* at 24. She also indicated that there had been times when Mother was motivated to participate in substance abuse services and become clean, but those periods of sobriety and participation in services did not last. When asked if there was "any indication based on the almost two years of this case that this

current positive outlook would last,” FCM Shepherd answered in the negative.
Id. at 34.

[14] GAL Gibson testified that she believed the termination of Mother’s parental rights was in B.W.’s best interest. In her report filed on July 20, 2021, GAL Gibson wrote:

[Mother] admitted at the time of removal that she struggled with an addiction to methamphetamine. At the time of removal, the DCS noted that there was an assessment already open in Jennings County due to substance use. [Mother] has two pending criminal cases for felony possession of narcotic drugs, methamphetamine and marijuana, and misdemeanor theft and resisting law enforcement. She is currently incarcerated and this GAL does not know a release date for her as of yet.

At disposition, [Mother] was asked to participate in supervised visits with [B.W.], address her substance abuse by getting an evaluation and following treatment recommendations, and participate in individual therapy and home based casework to establish employment, housing and transportation as well as enhance parenting skills.

[Mother] has visited with [B.W.] fairly consistently throughout the case, however, recently this has not been the case. As far as participation in services to address her addiction, [Mother] has done so minimally, and has continued to struggle with her addiction to methamphetamine, incurring charges in the last few months as a result of possession of the drug. She still has a lot of work to do in order to obtain sobriety which is critical in being able to provide a safe environment for her son.

Appellant’s Appendix Volume II at 20-21. She also wrote that Mother’s parental rights should be terminated.

[15] Based on the totality of the evidence, including the recommendations of FCM Shepherd and GAL Gibson, we conclude the trial court's determination that termination is in the child's best interests is supported by clear and convincing evidence.²

[16] For the foregoing reasons, we affirm the trial court.

[17] Affirmed.

Mathias, J., and Molter, J., concur.

² To the extent Mother relies upon *In re G. Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh'g denied*, we find that case distinguishable. In *In re G. Y.*, the mother was her child's sole caretaker for the first twenty months of his life. 904 N.E.2d at 1258. A year before the child's birth, Mother had delivered drugs to a police informant, she was arrested and incarcerated for the offense thirty-two months later when the child was twenty months old, and the trial court later terminated her parental rights. *Id.* at 1258-1259. The Court reversed and observed the mother's offense occurred before she became pregnant, there was no indication that she was anything but a fit parent during the first twenty months of the child's life, and she obtained post-release employment and suitable housing. *Id.* at 1262-1263. It also observed the mother maintained a consistent, positive relationship with her child while incarcerated, she had a lot of interaction with the child during their visits, and there was evidence of her commitment to reunification from the moment of her arrest including her attempt to arrange foster care with her sister and a friend. *Id.* at 1264-1265. Here, Mother continued to use methamphetamine after B.W.'s birth and after the court's dispositional order and order for parental participation, did not cooperate with DCS or service providers, and had pending criminal charges relating to conduct occurring following B.W.'s birth.