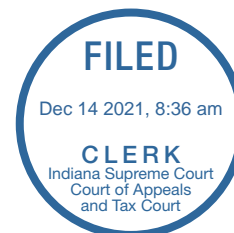


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
A.P., Jr., and K.P. (Minor
Children), and L.T. (Mother)
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

December 14, 2021

Court of Appeals Case No.
21A-JT-1492

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Judge

Trial Court Cause Nos.
45D06-2012-JT-235
45D06-2012-JT-236

May, Judge.

[1] L.T. (“Mother”) appeals the involuntary termination of her parental rights to her children, A.P., Jr., and K.P. (collectively, “Children”). Mother argues the trial court’s findings do not support its conclusions that the conditions under which Children were removed from Mother’s care would not be remedied; that the continuation of the Mother-Children relationship would pose a threat to Children’s well-being; that termination of Mother’s parental rights was in Children’s best interests; and that there existed a satisfactory plan for Children’s care following termination of Mother’s parental rights. We affirm.

Facts and Procedural History

[2] Mother is the biological mother¹ of A.P., Jr., and K.P., born August 11, 2014, and June 7, 2016, respectively. On May 20, 2017, the Department of Child Services (“DCS”) received a report that Mother was neglecting Children and their three older siblings (“Older Siblings”).² DCS investigated and spoke with Mother and Maternal Grandmother. Mother indicated she did leave Children and Older Siblings, the oldest of which was ten years old, home alone “for a few hours” but “the upstairs neighbors check on the children often while they are home alone.” (Ex. Vol. I at 9.) Mother admitted smoking marijuana, but reported she smoked outside. Mother submitted to an oral swab drug screen.

¹ Children’s father is A.P., Sr. (“Father”). The trial court also terminated Father’s parental rights but he does not participate in this appeal.

²Older Siblings are not subjects of the order before us. It is unclear when and why their cases were separated from Children’s case.

Mother also reported that K.P. recently had surgery to correct a “club foot” and his foot “became infected after his surgery due to his body rejecting the stitches.” (*Id.*) Mother signed a safety plan agreeing to ensure Children and Older Siblings were supervised at all times and to refrain from smoking marijuana in the house or near Children and Older Siblings.

[3] On April 28, 2017, Mother’s drug screen results came back positive for THC and cocaine. On May 5, 2017, Maternal Grandmother contacted DCS and advised that Mother had left Children and Older Siblings home alone for an undisclosed period of time and had not returned for multiple days. The Family Case Manager (“FCM”) was unable to contact Mother until May 11, 2017, when Mother called the FCM and told the FCM that she left the home “after the children fell asleep on Friday, May 5, 2017” and that “while the children were alone for a period of time, they were asleep and her neighbors were checking on the children frequently[.]” (*Id.* at 10.)

[4] On May 16, 2017, DCS removed Children and Older Siblings from Mother’s care due to “mom’s positive drug screen for marijuana and cocaine, as well as the home conditions being unsanitary and unkempt.” (Tr. Vol. II at 14.) DCS also noted Mother “continuously” left Children unsupervised and Mother admitted she needed “services due to her drug use.” (*Id.*) Children were placed in foster care, where they have remained throughout these proceedings. On the same day Children were placed in foster care, DCS filed a petition alleging Children and Older Siblings were Children in Need of Services (“CHINS”) based on Mother’s neglect and drug use.

- [5] On July 26, 2017, the trial court held a fact-finding hearing on DCS's CHINS petition, during which Mother admitted Children were CHINS. The trial court adjudicated Children as CHINS and proceeded to its dispositional order the same day. In its dispositional order, the trial court ordered Mother to complete a parenting assessment and follow all recommendations, complete a substance abuse assessment and follow all recommendations, participate in individual therapy, visit with Children, refrain from drug use, and maintain stable housing and employment.
- [6] Mother completed the parenting assessment and substance abuse assessment, but she did not participate in the recommended services. She also failed to participate in individual therapy and homebased casework. Mother was diagnosed with bipolar disorder, anxiety, and depression, but she did not take the medicine prescribed for those disorders. Mother also consistently tested positive for illegal drugs. Mother maintained suitable housing and employment, though her employment was inconsistent. Finally, Mother missed one-third of her scheduled visits with Children.
- [7] Based on Mother's noncompliance with services, the trial court changed Children's permanency plan from reunification to adoption on July 10, 2019. On December 31, 2020, DCS filed a petition to involuntarily terminate Mother's parental rights to Children. On April 15, 2021, the trial court held a fact-finding hearing on DCS's termination petition. Mother did not attend. On June 2, 2021, the trial court entered its order involuntarily terminating Mother's parental rights to Children.

Discussion and Decision

[8] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court’s unique position to assess the evidence, we will set aside a judgment terminating a parent’s rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh’g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).

[9] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parents to those of the children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

[10] To terminate a parent-child relationship, the State must allege and prove:

(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). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[11] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Mother does not

challenge specific findings, and thus they must be accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

1. Reasonable Probability Conditions Would Not Be Remedied

[12] A trial court must judge a parent’s fitness to care for her child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Mother argues the trial court’s findings do not support its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied.

[13] The trial court found:

The Department of Child Services received a referral for the family in April 2017 due to substance use and [Children] being unsupervised. Mother submitted to a drug screen. Initially, Children were allowed to remain in [Mother’s] care.

Mother was not responding to the Department of Child Services and did not appear at the court hearing for [Children]. [Children] were removed from [Mother’s] care in May 2017 due to substance abuse issues by [Mother], [Mother] leaving [Children] unsupervised, and [Mother] being uncooperative with the Department of Child Services.

* * * * *

Contact with each parent was sporadic throughout the CHINS cases. Mother's whereabouts were unknown from time to time throughout the CHINS cases. Mother would not participate or communicate with her service providers.

Mother remained sporadic with visitations with [Children] to the point that in May of 2018, the visitations were decreased. Mother remains sporadic with her visits with [Children] and would go months without visiting [Children]. Missed visitations are detrimental to the parent/child bond.

Mother completed the substance abuse assessment and parenting assessment in June of 2017, but did not follow through with any of the other recommendations.

Mother has mental health issues including anxiety, bipolar and depression. Mother was apparently self medicating with illegal substances. All services to engage [Mother] in appropriate mental health treatment have failed. Mother did not participate in services. Recently [Mother's] mental health medications were altered and [Mother's] recent sessions with her psychiatrist have shown decreased erratic thoughts by [Mother]. Mother's psychiatrist testified that [Mother] does not believe her diagnosis of bipolar.

Mother has not addressed her substance abuse issues. Mother failed to participate in the services offered to address her substance abuse issues.

Mother does not participate in homebased casework services, individual therapy, [or] parenting education, and [Mother] was

sporadic with visits with [Children]. Mother has not made any progress towards reunification.

Mother has seven children, five of which are in the care and custody of the Department of Child Services. Mother does not participate in the case plans for the reunification for the other children that are wards of the Department of Child Services. Mother's two youngest^[3] children are in her care and the case agent for the Department of Child Services has no safety concerns for the children.

* * * * *

After almost four years of attempting to provide services, neither parent is any closer to reunification with [Children]. Neither parent has rectified the reasons for the removal of [Children]. Neither parent seems interested in parenting [Children]. All efforts to engage parents in the services for reunification have failed.

* * * * *

Neither parent is providing any emotional or financial support for [Children]. Parents have not completed any case plan for reunification. Neither parent is in a position to properly parent [Children].

* * * * *

³ While this case has been pending, Mother has given birth to two additional children. DCS is not currently involved with these children.

. . . Additionally, [Children] deserve a loving, caring, safe, stable and drug free home.

(App. Vol. II at 7-9.)

[14] Mother acknowledges she did not fully complete services as ordered by the trial court. However, she contends the trial court did not take into account that she “maintained her own housing” and “secured and held employment.” (Mother’s Br. at 12.) While the evidence indicates Mother has had a stable residence since 2018 and has been employed during these proceedings, we cannot ignore Mother’s lack of participation in services to reunify her with Children. Additionally, Mother has consistently tested positive for THC, including as recently as approximately two weeks prior to the termination fact-finding hearing. Mother’s arguments are invitations for us to reweigh the evidence, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, we conclude the trial court’s findings support its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied.⁴ *See In re G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (affirming the trial court’s conclusion that the conditions under which child was removed

⁴ Mother also argues the trial court’s findings do not support its conclusion that the continuation of the parent-children relationship would pose a risk to Children’s well-being. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and we have concluded the trial court’s findings supported its conclusion that the conditions under which Children were removed from Mother’s care would not be remedied, we need not examine either of the other two requirements within that subsection of the statute. *See In re L.S.*, 717 N.E.2d at 209 (because statute written in disjunctive, court needs find only one requirement to terminate parental rights).

from mother's care would not be remedied based on mother's continued drug use and noncompliance with services).

2. Children's Best Interests

[15] In determining what is in Children's best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child's best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). Mother argues she had remedied other safety concerns except her "periodic use of marijuana" and thus termination of her parental rights to Children was not in Children's best interests. (Mother's Br. at 17.)

[16] As noted supra, the trial court made numerous findings regarding Mother's noncompliance with services, struggles with mental illness, lack of visitation with Children, and substance abuse issues. Family Case Manager Kenya Shaw testified that termination of parental rights was in Children's best interests based on Mother's noncompliance with services and her unwillingness to continue

individual therapy Children needed. Family Case Manager Linda Roberts also recommended termination of Mother’s parental rights because Children “need permanency, stability, and a loving stable home. They’ve been in placement for three and a half, almost four years, and the parents have not completed the court ordered reunification services.” (Tr. Vol. II at 58.) Further, she testified Children were doing well in school and “have bonded with the current foster family.” (*Id.*) Mother’s arguments to contrary are invitations for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses). We conclude the trial court’s findings support its conclusion that termination of Mother’s parental rights is in Children’s best interests. *See In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000) (termination in child’s best interest based on service provider recommendations that parental rights be terminated and evidence that the conditions under which child was removed from parents’ care would not be remedied), *abrogated on other grounds by In re G.P.*, 4 N.E.3d 1158, 1163 (Ind. 2014).

3. Satisfactory Plan for Children’s Care Following Termination

[17] Pursuant to Indiana Code section 31-35-2-4(b)(2)(D), parental rights cannot be terminated unless DCS provides sufficient evidence of a satisfactory plan for the care and treatment of the children following termination. Adoption is a sufficient plan for children’s care following termination of a parent’s rights. *See In re S.L.H.S.*, 885 N.E.2d 603, 618 (Ind. Ct. App. 2008) (adoption is

satisfactory plan for child's care and treatment after termination). Additionally, such a plan "need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated." *In re D.D.*, 804 N.E.2d at 268. Mother argues there is not a satisfactory plan for Children's care following termination of her parental rights because she has a suitable home for Children. While it is true that Mother has had stable housing since 2018, we cannot ignore her lack of progress in other areas required for reunification. DCS presented testimony that Children are bonded with their foster parents and are performing well in school, and that foster parents are interested in adopting Children. Mother's argument is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Therefore, we conclude the trial court's findings support its conclusion that DCS has a satisfactory plan for Children after the termination of Mother's parental rights. *See In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014) (adoption is a satisfactory plan for children after termination, even if the plan is not detailed), *trans. denied*.

Conclusion

[18] The trial court's findings support its conclusions that the conditions under which Children were removed from Mother's care would not be remedied, that termination of Mother's parental rights was in Children's best interests, and that

DCS had a satisfactory plan for Children's care following the termination of Mother's parental rights. Accordingly, we affirm the decision of the trial court.

[19] Affirmed.

Brown, J., and Pyle, J., concur.