

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of:

Ka.W. and Ko.W. (Minor Children)

and

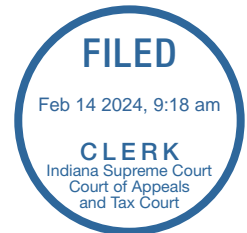
B.E. (Father) and M.W. (Mother),

Appellant-Respondents

v.

Indiana Department of Child Services

Appellee-Petitioner.



February 14, 2024

Court of Appeals Case No.
23A-JT-1933

Appeal from the St. Joseph Probate Court
The Honorable Ashley Mills Colborn, Magistrate
Trial Court Cause Nos.

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] This appeal involves the termination of M.W.’s (“Mother”) and B.E.’s (“Father”) parental rights to minors Ka.W. and Ko.W. (collectively, “the Children”). Mother is the biological mother of the Children. Father is the biological father of Ko.W.¹ In March of 2021, juvenile court found the Children to be children in need of services (“CHINS”). The Department of Child Services (“DCS”) petitioned to terminate Mother’s and Father’s parental rights. After a fact-finding hearing, the juvenile court ordered that Mother’s and Father’s parental rights be terminated. We affirm.

Facts and Procedural History

- [2] In October of 2020, DCS became involved with the Children after it had received a report that Mother and the Children had been living in a car for over

¹ Ka.W.’s biological father does not participate in this appeal and has voluntarily relinquished his parental rights to Ka.W.

a year, they had no food, and Mother had been abusing drugs. At the time, Father was incarcerated and could not care for the Children. As a result of the parents' inability to care for the Children, DCS removed the Children and placed Ka.W. with her paternal grandparents and Ko.W. in a kinship placement, but later placed him in foster care with Heather and Andrew Oake. DCS petitioned the juvenile court to find the Children to be CHINS, and, after Mother and Father admitted to the allegations contained in that petition, the juvenile court did so.

- [3] After the dispositional hearing, the juvenile court entered an order regarding Ko.W. that required Mother to (1) maintain weekly contact with the family case manager (“FCM”); (2) allow the FCM and other service providers to visit the home; (3) keep all appointments with DCS, the FCM, court-appointed special advocate (“CASA”), and guardian ad litem (“GAL”); (4) maintain suitable and safe housing; (5) maintain a legal and stable source of income; (6) not consume or distribute any controlled substances; (7) engage in substance-abuse treatment services; (8) engage in weekly drug screens; (9) participate in individual therapy; (10) engage in weekly supervised visitation; and (11) complete a psychological evaluation. The juvenile court ordered Father to (1) maintain weekly contact with the FCM, (2) avoid consuming or distributing any controlled substances, and (3) engage in programming offered by the prison. Regarding Ka.W., the juvenile court issued a second order that mirrored the first.

- [4] In May of 2021, Mother completed a substance-abuse assessment, during which she appeared “hyper and unfocused” and admitted that she “had used methamphetamine” on at least one occasion. Father’s App. Vol. II p. 32. At the assessment, Mother tested positive for methamphetamine and her drug screen suggested that there had been a “continuous use over a long period of time.” Father’s App. Vol. II p. 32. As a result of this assessment, the service provider recommended that Mother participate in a series of services and individual therapy; however, “Mother failed to comply with [those] services[.]” Father’s App. Vol. II p. 32.
- [5] When Mother failed to complete home-based case-management services, she was discharged from those services. Mother also failed to attend multiple supervised visits with the Children, which led to her supervised visitation being suspended. Additionally, Mother failed to complete a psychological evaluation. At the time of the February of 2023 fact-finding hearing, Mother was living with two individuals who had tested positive for fentanyl, one of whom had “an alcohol problem” and had “been arrested for domestic battery[.]” and the residence lacked heat. Tr. Vol. II p. 27.
- [6] On January 6, 2022, DCS filed its termination petition. In April of 2022, the juvenile court ordered Mother to participate in an inpatient drug-rehabilitation program. When a spot became available, Mother refused to attend. Mother attended Recovery Matters in August of 2022, but left after twenty days. Moreover, Mother continued to test positive for methamphetamine throughout the duration of the CHINS case.

- [7] In November of 2022, Mother gave birth to another child who tested positive for methamphetamine at birth. Mother admitted that she had used methamphetamine on the day of her delivery. Mother also tested positive for fentanyl. That child was subsequently adjudicated a CHINS in another case.
- [8] Meanwhile, Father was incarcerated throughout this CHINS case. Father is currently incarcerated for possession with intent to distribute methamphetamine, armed drug trafficking, and being a serious violent felon in possession of a firearm. Father’s anticipated release date is in 2047, at which point Ko.W. will be thirty years old. Father testified that he had become incarcerated when Ko.W. was “two or three” years old and that his last contact with Ko.W. had occurred in 2018. Tr. Vol. II p. 152. Moreover, Father has a criminal history including convictions for Level 6 felony theft and Class D felony theft and has been named as a respondent in multiple protective orders and no-contact matters.
- [9] At the February of 2023 termination hearing, Father testified that he had filed a habeas corpus petition. At the time of that hearing, Mother did not have a legal source of income; she claimed to have had various side jobs but did not provide evidence of pay stubs. Mother never completed any substance-abuse treatment. The Children, however, are “thriving” and “flourishing” in their placements; in fact, Ko.W., who was six years old at the time of the hearing, went from being unable to count to reading on his own in approximately nineteen months. Father’s App. Vol. II p. 36. The Children have not seen Mother since March 16, 2021, and Ko.W. has not seen Father since the beginning of the CHINS

case and has not been able to visit with him. Both FCMs and the CASA involved in this case testified that termination of Mother's and Father's parental rights and adoption "is in each child's best interests" due to "very little progression [...] in [Mother's] services" and the Children's need for permanency. Tr. Vol. II pp. 37, 119. The permanency plan for the Children is adoption and Ka.W.'s paternal grandmother, Carrie Baker, and Ko.W.'s foster mother, Heather Oake, testified that "they are willing to adopt the [C]hildren." Mother's App. Vol. II p. 27.

[10] On June 23, 2023, the juvenile court entered its order terminating Mother's and Father's parental rights based upon their failure to remedy the conditions prompting the Children's removal. In determining that termination was in the Children's best interests, the juvenile court relied on Father's continued incarceration and Mother's drug use, failure to complete services, and failure to visit with the Children.

Discussion and Decision

[11] The federal Constitution protects parents' right to raise their children; however, that right "may be terminated when parents are unable or unwilling to meet their parental responsibilities." *In re N.G.*, 51 N.E.3d 1167, 1169 (Ind. 2016) (citing *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005)). In other words, parental rights, when necessary, must be subordinate to the children's best interests. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008). The termination of parental rights is appropriate "where the children's

emotional and physical development is threatened.” *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. However, juvenile courts “need not wait until the children are irreversibly harmed [...] before terminating the parent-child relationship.” *Id.*

[12] When reviewing the termination of a parental relationship,

[w]e 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. 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.

In re N.G., 51 N.E.3d at 1170. Given the juvenile court’s proximity to the evidence and witnesses, we will reverse its decision to terminate a parent-child relationship only if the decision is clearly erroneous. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). “A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. A judgment is clearly erroneous only if the findings of fact do not support the [juvenile] court’s conclusions thereon, or the conclusions thereon do not support the judgment.” *In re A.B.*, 887 N.E.2d at 164 (internal citations omitted).

I. Whether Conditions for Removal will be Remedied

[13] In determining whether there is a reasonable probability that the conditions leading to a child’s removal will not be remedied, juvenile courts engage in a two-step analysis. First, the court must determine what conditions led to the

child's removal or continued placement in foster care. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). Second, the court must determine whether a reasonable probability exists that the conditions justifying removal will not be remedied. *Id.* In the second step, a juvenile court “must judge a parent’s fitness to care for his or her child[] at the time of the termination hearing[.]” *Id.* Moreover, the court must consider the parent’s habitual patterns of conduct to determine the probability of future neglect of the child. *Id.*

A. Mother

[14] Mother argues that there was insufficient evidence to support the juvenile court’s conclusion that her parental rights should be terminated. We disagree. When DCS first became involved with the Children, Mother and the Children had been living in a car for over a year and had no food and Mother had been abusing drugs. The record also clearly supports a finding that Mother has a serious drug problem, which renders her incapable of providing adequate care for the Children. At the time of her substance-abuse assessment, Mother tested positive for methamphetamine. Mother also admitted that she had used methamphetamine on the day of I.W.’s birth and tested positive for fentanyl at that time. Put simply, “Mother has consistently tested positive for methamphetamine throughout the duration of the CHINS matter[.]” Father’s App. Vol. II p. 38. *See In re K.T.K.*, 989 N.E.2d 1225, 1232 (Ind. 2013) (concluding that the conditions justifying removal would not be remedied when mother tested positive for various substances throughout the CHINS case).

- [15] Moreover, Mother’s housing issues remain unresolved. At the time of the termination hearing, Mother’s housing situation was “not suitable because the other (2) residents of the home have tested positive for methamphetamine and fentanyl.” Father’s App. Vol. II p. 39. One of those residents also “has an alcohol problem” and has “been arrested for domestic battery[.]” Tr. Vol. II p. 27. See *In re A.S.*, 905 N.E.2d 47, 49 (Ind. Ct. App. 2009) (concluding that mother’s housing situation was not suitable when she lived with five other adults, some of whom had criminal records).
- [16] Additionally, Mother neglected “to complete a *single service* to rectify the issues that led to [the Children’s] removal.” Father’s App. Vol. II p. 38 (emphasis in original). For example, Mother failed to complete individual therapy, never completed a substance-abuse treatment program, failed to complete home-based case-management services, and failed to attend multiple visits with the Children. “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 the conditions will not change.” *Matter of G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (quoting *Lang v. Starke Cnty. Off. Fam. and Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*). Mother’s arguments amount to an invitation to reweigh the evidence, which we will not do. *In re N.G.*, 51 N.E.3d at 1170.

B. Father

- [17] Father argues that the juvenile court erred by terminating his parental rights to Ko.W. while the possibility remained that he might be released from incarceration based on his pending habeas corpus petition. In making that argument, Father equates his case with *In re J.M.*, 908 N.E.2d 191 (Ind. 2009). In that case, the father had an established relationship with the child prior to his incarceration and was going to be released from prison in only six to twelve months after the January of 2008 termination hearing, depending on time cuts. *Id.* at 194. The mother had an expected release date of April of 2011, but could have that time cut to May of 2008. *Id.* Despite the parents' speculation about their release dates, the Indiana Supreme Court concluded that the parents would nonetheless be released in a short time and the child's need for permanency was not threatened. *Id.* at 196. In Father's case, however, we find that argument unconvincing.
- [18] Unlike the father in *In re J.M.*, Father has never had any relationship with Ko.W. At the time of the termination hearing, Ko.W. had "never met" Father. Tr. Vol. II p. 93. In fact, "Father has no established, ongoing relationship" and "is a stranger to" Ko.W. Father's App. Vol. II p. 42. Father's expected release date is in 2047, by which time Ko.W. will be thirty years old. Father's hope for an early release via his habeas petition is speculative, at best. Parental rights "may be terminated when parents are unable or unwilling to meet their parental responsibilities[,]” and we cannot say that the juvenile court erred in concluding

that Father’s lengthy criminal sentence has rendered him unable to meet his parental responsibilities. *In re N.G.*, 51 N.E.3d 1167, 1169 (Ind. 2016).

II. Best Interests of the Children

[19] Father and Mother contend that termination of their parental rights is not in the Children’s best interests. In determining whether termination serves a child’s best interests, we “must look at the totality of the evidence.” *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). The totality of the evidence here demonstrates that termination is in the Children’s best interests.

[20] We have previously held that a “parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” *In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010). Here, we have little hesitation in concluding that the record supports a finding that Mother and Father are unable to provide adequate care for the Children. At the time of the termination hearing, Mother lived with two others who “have tested positive for methamphetamine and fentanyl[,]” one of whom “has an alcohol problem” and has “been arrested for domestic battery[.]” Father’s App. Vol. II p. 39; Tr. Vol. II p. 27. Moreover, the record demonstrates that Mother has a persistent drug-abuse problem and has “never provided evidence of pay stubs” showing a “legal source of income[.]” Tr. Vol. II p. 27. Father simply has no relationship with Ko.W. and is incarcerated until 2047.

[21] Further, Indiana courts have long relied on the recommendations of the FCM, CASA, GAL and other service providers when considering whether “a reasonable finder of fact could conclude based on clear and convincing evidence” that “the termination is in the best interests of” a child. *In re N.G.*, 51 N.E.3d at 1173. Here, both FCMs and CASA Margaret Lloyd testified that termination and adoption were in the Children’s best interests because Mother has a persistent drug problem and had been non-compliant with services and Ko.W. had never met Father and Father would be incarcerated well into Ko.W.’s adulthood. Moreover, CASA Lloyd testified that the Children “are flourishing where they are currently placed[.]” Tr. Vol. II p. 146. As a result, the FCMs and CASA involved in this case testified in support of “the plans of adoption for” the Children by their respective placement families. Father’s App. Vol. II p. 35.

[22] We will not make children “wait indefinitely for their parents to work toward preservation or reunification[.]” *In re E.M.*, 4 N.E.3d at 648, or “wait until [they] are irreversibly harmed [...] before terminating the parent-child relationship.” *In re T.F.*, 743 N.E.2d at 773. Because “children have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships[.]” we conclude that the juvenile court’s decision is not clearly erroneous. *K.T.K.*, 989 N.E.2d at 1230.

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

Altice, C.J., and Felix, J., concur.

ATTORNEY FOR APPELLANT B.E.

A. Robert Masters
St. Joseph County Deputy Public Defender
Nemeth, Feeney, Masters & Campiti, P.C.
South Bend, Indiana

ATTORNEY FOR APPELLANT M.W.

Ernest P. Galos

South Bend, Indiana

ATTORNEY FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana