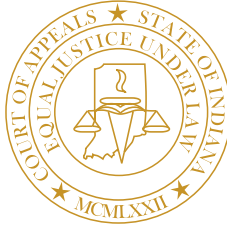


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

In the Involuntary Termination of the Parent-Child Relationship
of:

A.M., N.S.M., N.N., S.N., and C.N. (Minor Children),

and

D.M. (Mother)

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner



August 6, 2024

Court of Appeals Case No.
24A-JT-463

Appeal from the St. Joseph Probate Court
The Honorable Ashley M. Colborn, Magistrate

Trial Court Cause Nos.
71J01-2303-JT-22

Memorandum Decision by Judge Bradford
Judges Crone and Taviton concur.

Bradford, Judge.

Case Summary

[1] D.M. (“Mother”) is the biological mother of A.M., N.S.M., N.N., S.N., and C.N. (collectively, “the Children”) and suffers from low cognitive ability.¹ After the Indiana Department of Child Services (“DCS”) received a report of sexual abuse and neglect, it removed the Children from Mother’s care and petitioned the juvenile court to find them to be children in need of services (“CHINS”). Eventually, DCS petitioned the juvenile court to terminate Mother’s parental rights based on her inability to progress towards reunification and in meeting the Children’s significant needs, which petition the juvenile court granted. Mother challenges the termination order, arguing that the evidence is insufficient to support a finding that the parent-child relationship

¹ The Children’s father does not participate in this appeal.

threatened the Children's well-being and termination was in their best interests. We affirm.

Facts and Procedural History

- [2] Mother has had a "very significant history" with DCS and the equivalent agency in Michigan. Tr. Vol. II pp. 145. Prior to 2020, Mother had had her parental rights to ten other children terminated. The Children's adult sister, R.J., ("Adult Sister") was removed from Mother's care as a child because of neglect and sexual and physical abuse. Each time that Mother had another child, Michigan would intervene because Mother had been "flagged for being an unfit" parent. Tr. Vol. II p. 145. While the Children were still in Mother's care, Adult Sister witnessed S.N. and C.N. engaging in inappropriate sexual behaviors together on multiple occasions.
- [3] In late-2020, DCS became involved with the Children after having received reports that the Children had been left home alone, neglected, and sexually abused. DCS implemented a safety plan in which Adult Sister took temporary custody of the girls and Mother retained custody of the boys. During that time, Adult Sister witnessed the three boys "humping" each other in an upstairs bedroom while Mother was downstairs.
- [4] In November of 2020, DCS removed the Children from Mother's care because of "[l]ack of supervision by [M]other, sexual interactions amongst the [C]hildren and other kids in the neighborhood, [M]other's inability to understand the [C]hildren's needs, [and] hygiene issues." Tr. Vol. II p. 107. A

few days after the Children's removal, DCS petitioned the juvenile court to find the Children to be CHINS, alleging that the Children had disclosed that they had had sexual contact with one another and other children in the neighborhood, Mother's home was in poor condition, the Children had inadequate food, Mother had failed to supervise the Children in accordance with DCS's safety plan, and Children and Mother have developmental delays and disabilities. That same day, the juvenile court held an initial hearing, approving the Children's continued removal from Mother's care.

[5] In February of 2021, Mother admitted to the allegations in the CHINS petition and the juvenile court found the Children to be CHINS. In April of 2021, the juvenile court ordered Mother to participate in services and, among other things, maintain suitable housing, complete a parenting assessment and all recommended services, complete a psychological assessment and all recommended treatment, participate in home-based counseling and casework, obtain a general educational development diploma, attend supervised visitation, and complete a clinical interview and assessment and follow all treatment recommendations.

[6] In the spring of 2021, psychologist Dr. Cathleen Amador, Psy.D., of Crown Counseling completed psychological evaluations of some of the Children. Dr. Amador determined that N.S.M. had lower cognitive function, diagnosed her with mild intellectual disability, and concluded that she needed to be placed with caretakers who understand her needs. Dr. Amador determined that C.N. has "very, very poor boundaries" and developmental delays and would need

“substantial support to maintain his health and safety for his entire life.” Tr. Vol. II pp. 30, 31. Dr. Amador diagnosed S.N. with three learning disorders and concluded that she had higher cognitive functioning than her siblings, but was still in the “low average range[.]” Tr. Vol. II p. 37.

- [7] Also in 2021, psychologist Dr. Rachel Garcia, Psy.D., of South Bend Mental Health Associates conducted psychological assessments of A.M. and N.N. Dr. Garcia determined that A.M. and N.N. were “developmentally and emotionally immature” in part because of their “severe” neglect by Mother. Tr. Vol. II pp. 16, 20. A.M. and N.N. also suffer from intellectual disability and are in the “low range of cognitive functioning[.]” Tr. Vol. II p. 19.

Additionally, A.M., C.N., and N.N. received therapy from Gerri Bough at Lincoln Therapeutic Partnership from the spring of 2021 through part of 2022. After providing some of the Children with therapy, Bough opined that she has concerns “for the basic care [...], providing food consistently, for providing supervision, and just for their safety” and that is “compounded that we have five children, and each one of them has special needs.” Tr. Vol. II p. 84. There is also “extensive and intensive sexual behavior that’s happened with the [C]hildren that would require extensive and intensive supervision and structure in the home[.]” which Bough worries Mother cannot provide. Tr. Vol. II p. 85.

- [8] In December of 2021, Mother completed the DCS-referred psychological-parenting evaluation with psychologist Dr. Alan Wax, Ph.D. Dr. Wax determined that Mother has a low IQ, which has a “profound effect” on her ability to parent and results in “really bad choices and poor judgment.” Tr.

Vol. II p. 62. Dr. Wax further noted that Mother's perception is "far different from reality[,] so she believes "she didn't do anything wrong and everyone is against her." Tr. Vol. II p. 62. When it comes to Mother's reunification with the Children, Dr. Wax identified three barriers: (1) Mother's low cognitive functioning; (2) "her total denial of any responsibility for anything"; and (3) her "strong paranoid victim" mentality. Tr. Vol. II p. 63. In short, Dr. Wax concluded that "without intervention and assistance, [Mother] would not be able to independently parent her children safely." Tr. Vol. II p. 69.

[9] One month later, the juvenile court changed the Children's permanency plan to adoption. (Tr. Vol. II p. 120) At that time, Mother's "circumstances hadn't changed from the time that [DCS] originally got involved with her." Tr. Vol. II p. 121. In March of 2023, DCS petitioned to terminate Mother's parental rights to the Children.

[10] That September, the juvenile court held a termination hearing on DCS's petition. Court-appointed special advocate ("CASA") Brittany Obando testified that the Children have "come a long way from where they started" in terms of their education. Tr. Vol. II p. 150. N.N. and C.N. had been placed in the same pre-adoptive foster home and had both improved and are "heading in the right direction." Tr. Vol. II p. 138. Adult Sister had taken custody of A.M., N.S.M., and S.N. and testified that "they are liking where they are" and that she would like them to stay in her care. Tr. Vol. II pp. 98.

[11] At the termination hearing, CASA Obando and family case manager (“FCM”) Lillian Kekelwa testified that termination of Mother’s parental rights to the Children is in the Children’s best interests. Specifically, CASA Obando testified that Mother’s “cognitive functioning unfortunately does not allow her to be in a position to keep [the Children] safe or to be able to constantly parent them in a way that’s appropriate for where they’re at developmentally.” Tr. Vol. II p. 155. FCM Kekelwa testified that “nothing has changed from the time that [DCS] got involved in the case for [Mother] to be able to provide adequate care and supervision for the [C]hildren.” Tr. Vol. II p. 122.

[12] In January of 2024, the juvenile court granted DCS’s petition and terminated Mother’s parental rights to the Children. The juvenile court concluded that “Mother’s extremely low cognitive functioning, coupled with her extremely low IQ and ten (10) prior terminations of her parental rights, has made it impossible for Mother to parent [the C]hildren, especially with the [C]hildren’s significant special needs.” Appellant’s App. Vol. II p. 57. Moreover, the juvenile court found that the evidence demonstrated that “there is a reasonable probability that the conditions that led to [the Children’s] removal and continued placement” out of Mother’s care will not be remedied, that continuing the parent-child relationship “poses a threat to the [Children’s] well-being[,]” and that termination is in the Children’s best interests. Appellant’s App. Vol. II pp. 68, 69.

Discussion and Decision

[13] The federal Constitution protects a parent’s right to raise her 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*.

[14] 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).

[15] To support the termination of Mother’s parental rights to the Children, DCS needed to prove

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made.

(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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).² Notably, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, requiring only one of those elements to be satisfied. *See In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010).

[16] Mother challenges whether there is sufficient evidence to support the juvenile court’s threat and best-interests conclusions under subsections (B)(ii) and (C). When it comes to section (B), however, we conclude that Mother has waived her challenge because she has failed to make a cogent argument as to the juvenile court’s threat conclusion. *See* Ind. App. R. 46(A)(8)(a) (The argument section of an appellate brief “must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.”). Mother simply questions in her statement of the issues whether continuing the parent-child relationship threatened the Children’s well-being and does nothing to develop that argument further, thus waiving it. *In re A.G.*, 6 N.E.3d 952, 958 (Ind. Ct. App. 2014) (concluding the mother had waived her claim when she did “not support [her] contention with cogent argument”). Because Mother has waived this contention, we cannot say that the juvenile court’s conclusions that the conditions leading to the Children’s removal will not be remedied or that

² The General Assembly amended this statute, effective July 1, 2024; however, the older version of the statute applies here.

continuing the parent-child relationship threatens the Children are clearly erroneous. *See In re E.M.*, 4 N.E.3d at 642.³

[17] When it comes to the juvenile court’s best-interests conclusion, Mother argues that she “never had a problem complying with the court’s orders” and that she “has a lot of concern for the [C]hildren and a lot of love for them.” Appellant’s Br. p. 7. 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 of Mother parental rights is in the Children’s best interests.

[18] While Mother has engaged in services with DCS, she has not made the necessary progress to show that she can provide the Children with a suitable environment. Indeed, “simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change.” *In re J.S.*, 906 N.E.2d 226, 234 (Ind. Ct. App. 2009). Moreover, 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 at 221. In this case, CASA Obando testified that Mother’s “cognitive functioning unfortunately does not allow her to be in a position to

³ We also note that the fact section of Mother’s brief contains no citations to the record and would like to remind Mother that Indiana Appellate Rule 46(A)(6)(a) requires that she support her fact section with such citations.

keep [the Children] safe or to be able to constantly parent them in a way that's appropriate for where they're at developmentally." Tr. Vol. II p. 155. FCM Kekelwa testified that "nothing has changed from the time that [DCS] got involved in the case for [Mother] to be able to provide adequate care and supervision for the [C]hildren." Tr. Vol. II p. 122.

[19] Additionally, based on their interactions with Mother, FCM Kekelwa and CASA Obando testified that termination of Mother's parental rights is in the Children's best interests. Specifically, FCM Kekelwa and CASA Obando opined that Mother's low cognitive functioning simply "does not allow her the flexibility she needs to parent[.]" Appellant's App. Vol. II p. 48. Indiana courts have long relied on the recommendations of FCMs, CASAs, 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.

[20] By the time of the termination hearing in September of 2023, it had been more than three years since DCS had removed the Children from Mother's care. Dr. Amador, Dr. Garcia, and Therapist Bough explained that the Children needed stability to accommodate their special needs. Moreover, the Children were "heading in the right direction" with their pre-adoptive placements. Tr. Vol. II p. 138. 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. 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 1225, 1230 (Ind. 2013).

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

Crone, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Mark F. James
Mark James Legal, LLC
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General

Savannah L. Mundy
Certified Legal Intern
Indianapolis, Indiana