

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

K.P.,
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

May 24, 2023

Court of Appeals Case No.
22A-JT-2890

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause Nos.
34C01-2207-JT-246, 34C01-2207-
JT-247

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] K.P. (Mother) appeals from the involuntary termination of her parental rights to her minor children, T.P.¹ and K.H.² (collectively, Children).³ She challenges the sufficiency of the evidence supporting the termination.

[2] We affirm.

Facts & Procedural History

[3] The Indiana Department of Child Services (DCS) became involved with Mother and Children just before midnight on August 8, 2021,⁴ after receiving a report from the Kokomo Police Department seeking emergency assistance. Family Case Manager (FCM) Shikita Jones responded and discovered that Mother was being arrested for resisting law enforcement and neglect, and Children, who were improperly clothed and hungry, had nowhere to go. Mother was unable to coherently talk with FCM Jones and had been released from jail only days earlier. FCM Jones's interaction with Mother raised concerns about substance abuse and mental health issues. FCM Jones

¹ Born June 18, 2014.

² Born September 7, 2016.

³ The parental rights of the Children's respective fathers were also terminated. Neither father participates in this appeal.

⁴ This was not DCS's first involvement with the family, as K.H. had been born drug exposed resulting in a substantiated report in 2016. There was also an unsubstantiated report of neglect in June 2019.

contacted Children’s maternal grandmother, who indicated that she could not take placement. As a result, FCM Jones detained Children and filed petitions alleging that each was a child in need of services (CHINS).

- [4] The State charged Mother, under Cause No. 34D02-2108-F6-2593 (F6-2593), with one count of Class A misdemeanor resisting law enforcement and two counts of Level 6 felony neglect of a dependent. Mother was released on bond on or about August 23, 2021, but violated bond a few days later when she committed a new criminal offense. Under Cause No. 34D02-2108-F6-2781 (F6-2781), the State charged Mother with Level 6 felony possession of methamphetamine, Class A misdemeanor criminal trespass, and Class C misdemeanor possession of paraphernalia.
- [5] Children were adjudicated CHINS on September 21, 2021, after a contested hearing. The trial court made specific findings in support of the adjudication, including that Children had been removed from Mother’s care because she was homeless with them, her arrest left them without a caregiver, and her mental health was a “serious concern.” *Exhibits Vol. 3* at 26.
- [6] At the dispositional hearing on October 18, the trial court ordered Mother to, among other things, complete mental health, substance abuse, and parenting assessments and related recommendations, participate in supervised visits (subject to negative drug screens), maintain contact with DCS, submit to random drug/alcohol screens, and refrain from all illegal activity.

[7] On October 26, Mother was granted pretrial release in F6-2781. Among the conditions of her release, she was ordered to maintain mental health treatment, participate in regular and random drug screens, and follow “any and all recommendations and requirements with DCS in CHINS case.” *Id.* at 159. Before her release, FCM Brittany McLerran met with Mother at the jail and provided her with DCS contact information. Mother, however, did not reach out to DCS until about six weeks after her release. Mother then declined to take a drug screen to see Children and refused to participate in other reunification services being offered by DCS.

[8] A CHINS review hearing was held on January 24, 2022. Mother was reincarcerated at this time and had not participated in any services. The State had charged Mother under Cause No. 34D02-2201-F6-240 (F6-240) for felony drug offenses, including possession of methamphetamine, that occurred the day before the CHINS hearing. She remained incarcerated until May 3, 2022, when she entered into a plea agreement resolving all three pending criminal cases and placing her on supervised probation for a year, with a requirement that she complete the court’s drug and alcohol program. Mother did not participate in reunification services during this period of confinement, nor did she do so after her release from jail.

[9] For at least two months following her release, Mother did not return FCM McLerran’s attempts to contact her, so DCS filed the instant petitions to terminate parental rights on July 11, 2022. Mother then contacted FCM McLerran, and they discussed the need for a drug screen and participation in

reunification services. Mother submitted to one drug screen, in August, which was positive for marijuana, but did not follow up on any of the referrals for services, and she failed to appear for the CHINS permanency hearing in August.

[10] The trial court held a fact-finding hearing in this case on October 17, 2022. Mother appeared in custody, as she had been incarcerated for about a month on a petition to revoke her probation due to failed drug screens. FCM McLerran testified that throughout the life of the CHINS case, Mother had failed to participate in any services, even when not incarcerated for months at a time, had not stayed in regular contact with DCS, and had not seen Children since their removal. In sum, Mother had made no progress toward reunification, and FCM McLerran did not believe additional time would result in a different outcome. She also opined that termination of parental rights was in Children's best interests, as they were doing very well in their respective pre-adoptive foster placements and had waited long enough for stability and permanency. The CASA, Lisa Washington, similarly testified that she believed termination was in Children's best interests, as Mother had made no progress in remedying the reasons for removal.

[11] Mother testified and blamed her multiple stints in jail, lack of money for drug screens, and inexperience with DCS for her stagnancy during the case. She claimed that she had not been given "enough time and a fair chance to participate in services." *Transcript* at 91. As to her lack of engagement with services after her release in late October through January 2022, Mother

characterized that period as “a mess” and stated she was “stayin in between houses and not stayin in the best of places neither.” *Id.* at 98. Likewise, regarding the four months just before her arrest in September 2022, Mother testified, “I’s tryin to get myself together, working, trying to stay clean, make sure like everything’s set up to where I would be able to see my kids.” *Id.* at 100. When asked how long Children should have to wait for permanency, Mother responded, “I feel like as long as it takes[;] well for one I would have to [be] stable first.” *Id.* at 104. She then stated, “a few more months.” *Id.* Mother had no definitive plans for housing upon her upcoming release from jail, which she believed would be in about a month.

[12] On November 7, 2022, the trial court issued its order terminating Mother’s parental rights with respect to Children. Mother now appeals. Additional information will be provided below as needed.

Discussion & Decision

[13] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. Due to the applicable clear and convincing evidence standard, we review to determine whether the

evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[14] We recognize that 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 J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[15] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[16] Mother first challenges the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Children's removal or continued placement outside her home would not be remedied. In determining the probability that conditions will change,

the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, "but also those bases resulting in the continued placement outside the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cnty. Off. of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)].

In re N.Q., 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[17] Here, Mother does not specifically challenge any of the trial court's detailed findings. She simply asserts that: (1) DCS had not been involved with the

family before the August 2021 incident; (2) Mother had resolved her criminal cases by time of the termination hearing; and (3) she and Children could live with maternal grandmother. None of these assertions, however, are accurate. In fact, DCS substantiated neglect in 2016 after K.H. was born drug exposed, Mother was incarcerated for violating probation at the time of the hearing,⁵ and maternal grandmother testified that Mother still “need[ed] to get some housing” and that Mother could stay with her “for eleven days” upon her release from jail – not that Mother and Children could live with her.⁶ *Transcript* at 113, 114.

[18] In any event, the unchallenged findings reveal that Mother demonstrated “a concerning pattern of criminality” and continued to commit new crimes during the proceedings. *Appendix* at 78. And even during the periods that she was not incarcerated, Mother failed to maintain regular contact with DCS, did not participate in any court-ordered services, and never saw Children after their removal. In sum, Mother made no progress in remedying the reasons for Children’s removal and continued placement outside her home and made “no positive changes in [her] circumstance.” *Id.* The court aptly observed: “The vicious cycles that parents have created for themselves prominently feature

⁵ As Mother notes, “incarceration is an insufficient basis for terminating parental rights.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 643 (Ind. 2015). But her parental rights were not terminated based on her stints in jail; they were terminated because she continued to commit crimes and made no meaningful progress toward reunification. *Cf. id.* at 643-44 (termination reversed where, despite being incarcerated, father made “extensive efforts to better himself by learning parenting skills, addressing his problems with substance abuse, and establishing a bond with both of his children”).

⁶ Grandmother lived in government subsidized housing and had the care and custody of five other children in her home.

repeated arrests and incarcerations, drug abuse, mental instability, and homelessness. [They] have clearly demonstrated their inability to even recognize any need to change, let alone to make the changes needed.” *Id.* at 79.

[19] The court’s findings of fact amply support its conclusion that the conditions keeping Children from Mother’s care were unlikely to change. Indeed, Mother was in no better position to care for Children than she was on the day of their removal, and she had, throughout the case, demonstrated an inability or unwillingness to work toward reunification.

[20] Finally, we address Mother’s argument related to Children’s best interests. She again asserts that Children had no prior contact with DCS, and she directs us to maternal grandmother’s testimony that she believed Mother was capable of raising Children. In sum, Mother argues that “DCS is basing their determination of best interests of the Children over a very short span of their lives, focusing on recent events and ignoring the long, solid history that [Mother] had with her Children.” *Appellant’s Brief* at 14.

[21] Mother’s argument amounts to an improper request for us to reweigh the evidence. Moreover, her claim of having a solid history until Children’s removal is belied by the record. On top of K.H. being born drug exposed, Mother was incarcerated on a felony conviction prior to the instant events. That is, in August 2018, Mother committed domestic battery of a child under the age of fourteen, a Level 6 felony. She first entered into a plea agreement, under which judgment was withheld, but in September 2019, she was

terminated from the Mental Health Problem Solving Court and later sentenced to 365 days in jail with 336 credit days.

[22] As for the best interests of Children, the trial court noted that both the FCM and the CASA recommended termination of parental rights. The trial court particularly focused on CASA Washington's recommendations as follows:

CASA Washington reported that each of the Children's foster families have made the Children feel wanted, loved, and a part of a family that cares for them. CASA Washington recommended the termination of the parent-child relationships and indicated it was in the best interests of the Children ... to be adopted so they may continue to heal in a safe, stable, loving environment. CASA Washington additionally highlighted parents' repeated incarcerations, the parents' complete refusal to cooperate or participate in reunification efforts, and the complete lack of contact between the parents and Children as reasons for her recommendation.

Appendix at 84. Based on the totality of the evidence, the trial court stated agreement with the CASA and explained, "Children should not have to wait endlessly to have a secure, stable, and safe environment in which to live. The harm these Children have already suffered cannot be erased, but further harm can be minimized." *Id.*

[23] Over the fourteen-month life of the case, Mother showed an unwillingness to alter her life in any way for Children's sake and made no effort to engage in available services to address her mental health/substance abuse issues, to obtain stability, or to even see Children. Rather, she "continued to choose a life of

drugs, criminality, and instability over parenthood.” *Id.* at 82. Under the circumstances, the trial court did not err in determining that termination of parental rights was in Children’s best interests. *See Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (holding that trial courts must look to the totality of the evidence in making the best-interest determination and subordinate the parents’ interests to those of the children, with the children’s need for permanency being a central consideration); *In re A.G.*, 45 N.E.3d 471, 479 (Ind. Ct. App. 2015) (“[T]he recommendation by both the 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.”), *trans. denied.*

[24] Judgment affirmed.

Riley, J. and Pyle, J., concur.