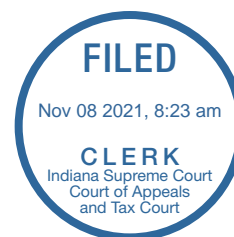


MEMORANDUM DECISION

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
Ju.M. (Minor Child) and
J.M. (Mother)
J.M. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

November 8, 2021

Court of Appeals Case No.
21A-JT-1135

Appeal from the
Lake Superior Court

The Honorable
Thomas P. Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2010-JT-197

Vaidik, Judge.

Case Summary

- [1] J.M. (“Mother”) appeals the termination of her parental rights to her son, Ju.M. (“Child”). We affirm.

Facts and Procedural History

- [2] Child was born in 2011.¹ He has autism and requires constant supervision and routines. In 2015, Child was removed from Mother and found to be a child in need of services (CHINS) due in part to Mother’s cocaine use. *See Ex. Vol. I pp. 189-90, 194-95.* Child was returned to Mother in 2016.
- [3] In September 2017, Mother, Mother’s boyfriend, and Child lived together in Gary. Late that month, the Department of Child Services (DCS) received a report that Mother was using drugs, had mental-health issues, and was not getting services for Child. On October 2, DCS went to the home to investigate. Mother, who was seven months pregnant, denied illegal drug use and refused a drug screen. A few days later, Mother’s boyfriend called DCS and said he and Mother had been using crack cocaine daily for the past eight months. DCS returned to the home, but Mother and Child were gone. Mother eventually left Indiana with Child. DCS communicated with Mother by phone, but Mother

¹ Child’s alleged father passed away.

did not cooperate. DCS then obtained a court order for Mother to undergo a drug screen, but she still did not cooperate.

- [4] In November 2017, DCS filed a motion to take Child into custody and a CHINS petition. Child was taken into custody in Louisiana and removed from Mother for a second time in two years. Later that month, Mother gave birth. Both Mother and the baby tested positive for cocaine, and the baby died when he was three days old. *See* Tr. pp. 23-24, 27-28.
- [5] In April 2018, the trial court found Child to be a CHINS. Mother was ordered to, among other things, submit to random drug screens, participate in substance-abuse therapy, and attend visits with Child.
- [6] Initially, Mother's visits with Child were supervised. The visits were later changed to unsupervised because Mother was testing negative for drugs and participating in services. In May 2018, Child was returned to Mother. Soon thereafter, Mother became "sporadic" with her drug screens and substance-abuse therapy. *Id.* at 75. When Mother did test, they were "consistently positive for cocaine." *Id.* at 76. In addition, the drug screens were often negative for Mother's psychiatric medications, which was "concerning" to DCS since Mother had several longstanding mental-health diagnoses, including PTSD, ADD, bipolar disorder, anxiety, depression, and borderline personality disorder. *Id.* at 87.
- [7] Due to Mother's positive drug screens, the trial court gave Mother an "ultimatum," telling her if she continued testing positive Child would be

removed from her again. *Id.* at 78. DCS told the court it was trying to “preserve” Child’s placement with Mother due to his autism and difficulty adjusting. *Id.* However, in July 2019, Child was removed from Mother for a third time due to her noncompliance with services, including failing to undergo a court-ordered psychiatric evaluation, and positive drug screens. For the next couple months, Mother consistently attended visits. However, in September 2019, Mother became “noncompliant with the visits.” *Id.* at 89. Mother’s failure to consistently attend visits caused Child’s behavior to “spiral out of control in the foster home.” *Id.* Mother was also inconsistent with her substance-abuse therapy. DCS noticed a pattern of Mother “pick[ing] back up her services” right before a court hearing and then “fall[ing] off” right after. *Id.* at 86, 98.

[8] In October 2020, DCS filed a petition to terminate Mother’s parental rights to Child. In February 2021, Mother had a medication review, which she had been ordered to do two years earlier, and had her medications changed. Mother tested positive for cocaine on January 13, March 5, and April 15. These drug screens were taken at visits with Child. In addition, Mother’s psychiatric medications did not show up on these screens.

[9] A remote termination hearing was held on April 21 and May 6, 2021. Family Case Manager (FCM) Jasmyne Kohler testified that over the past four months, Mother had attended barely half of her visits with Child. In addition, she testified Mother tested positive for cocaine on April 15, just six days before the hearing, and still had not undergone the psychiatric evaluation. FCM Kohler said Child had been in the same foster home since January 2021, where he was

bonded with his foster parent and doing “[v]ery well,” and that the foster parent wanted to adopt him. *Id.* at 108. Finally, FCM Kohler testified it is in Child’s best interests for Mother’s parental rights to be terminated because he needs “a stable, consistent environment” that is substance free and where his disability and other needs are being met. *Id.* at 109.

[10] Mother’s substance-abuse therapist, Sharon Parker, also testified. Parker, who had been working with Mother for three-and-a-half years, testified Mother was supposed to see her twice a week for intensive outpatient substance-abuse therapy but that her attendance had been inconsistent. In fact, Parker said Mother canceled a session scheduled the day before the hearing. Parker testified that despite working with Mother since November 2017, she had not attained sobriety. Parker noted Mother had yet to move past the first stage of recovery, which is admitting a drug problem.

[11] Mother testified she was doing better after her medications were changed and that she needed just “three months” to prove her new medications were working and she wasn’t using cocaine anymore. *Id.* at 57. In support, Mother presented the testimony of her psychiatrist, Dr. Jose Ramirez. According to Dr. Ramirez, he treated Mother primarily for bipolar disorder and knew little about her cocaine use, as she had not been “open” with him about it. *Id.* at 147. Dr. Ramirez testified that although Mother looked “somewhat better” over the past couple visits, he was worried her bipolar disorder would get “worse” because she “insist[ed] on restarting” an antidepressant known to negatively affect bipolar disorder. *Id.* at 144. In addition, he testified cocaine use can exacerbate

bipolar-disorder symptoms. Dr. Ramirez said only time would tell if Mother improved after her medications were changed. *See id.* at 145.

[12] Following the hearing, the trial court entered an order terminating Mother's parental rights to Child.

[13] Mother now appeals.

Discussion and Decision

[14] Mother contends DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless they are clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[15] A petition to terminate parental rights must allege, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

I. Conditions Remedied

[16] Mother challenges the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal from the home will not be remedied.² In determining whether the conditions resulting in a child’s removal

² Mother also challenges the trial court’s conclusion there is a reasonable probability the continuation of the parent-child relationship poses a threat to the well-being of Child. However, we need not address this argument since we are affirming the court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal from the home will not be remedied. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct.

will not be remedied, the trial court engages in a two-step analysis. First, the court must ascertain what conditions led to the child’s placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[17] Here, Child was removed from Mother due to her drug use and mental-health issues. The record shows Mother has several longstanding mental-health diagnoses and is prescribed several psychiatric medications. At various times throughout this case, however, Mother has not taken her medications as prescribed. In addition, the record shows Mother has struggled with cocaine use since at least 2015, when DCS removed Child for the first time. Mother was again using cocaine in 2017 when DCS removed Child for the second time. Mother was pregnant, and both she and the baby tested positive for cocaine. The baby died shortly after birth. Although Child was returned to Mother on a trial basis in May 2018, Mother started missing drug screens and substance-abuse-therapy sessions and testing positive for cocaine. In July 2019, DCS removed Child for the final time. Although Mother did better for a few months,

App. 2015) (explaining Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the requirements has been established by clear and convincing evidence), *trans. denied*.

she again started testing positive for cocaine and missing therapy sessions and visits with Child. This led to the filing of the termination petition in October 2020. After the petition was filed, Mother continued testing positive for cocaine and missing therapy sessions and visits with Child.

[18] Despite this evidence, Mother claims she was doing better at the time of the termination hearing due to her change in medications. Even assuming Mother’s mental health had improved, evidence was presented that she had attended barely half of her visits with Child in the preceding four months (and had cocaine in her system during three of the visits), had tested positive for cocaine six days before the hearing, and had canceled a substance-abuse-therapy session scheduled the day before the hearing. As Mother’s substance-abuse therapist testified, a “huge stumbling block” to achieving sobriety—and “the first step to recovery”—is admitting a drug problem, which Mother **still** had not done after three-and-a-half years of therapy. Tr. p. 116.

[19] The evidence supports the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal from the home will not be remedied.³

³ Mother cites *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*, where we affirmed the trial court’s conclusion there was a reasonable probability the conditions resulting in the child’s removal would not be remedied. Mother claims this case “can be distinguished from [*D.D.*] on a number of points” and therefore this case “should not have resulted in the termination of [her] parental rights.” Appellant’s Br. pp. 13-14. However, just because the facts in *D.D.* are different from the facts in this case doesn’t mean the evidence in this case does not support the trial court’s conclusion.

II. Best Interests

[20] Mother next challenges the trial court's conclusion termination is in the best interests of Child. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parent to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[21] Mother argues termination is not in the best interests of Child because she and Child were bonded. There is no dispute Mother and Child "had a strong attachment toward[] one another." Tr. p. 80. However, this isn't the only consideration. As just explained, the totality of the evidence supports the trial court's conclusion termination is in the best interests of Child. Mother has struggled with cocaine use since at least 2015. Child, who has autism and requires constant supervision and routines, has been removed from Mother three times. Despite receiving services, Mother has continued to test positive for cocaine, including six days before the termination hearing. Mother's substance-abuse therapist testified that in the three-and-a-half years she had worked with Mother, she had yet to acknowledge she has a drug problem, which is the first

step to recovery. Finally, FCM Kohler testified termination is in the best interests of Child so he can have a stable, drug-free environment where all his needs are being met.

[22] The evidence supports the trial court's conclusion termination is in the best interests of Child.

III. Satisfactory Plan

[23] Finally, Mother challenges the trial court's conclusion there is a satisfactory plan for Child's care and treatment. Mother acknowledges Child is in a pre-adoptive foster home and that the foster parent wants to adopt him. However, she claims there is "no evidence that the foster home had sufficiently bonded with" him. Appellant's Br. p. 18. Adoption is a satisfactory plan for the care and treatment of a child. *See In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). This is so even if an adoptive home is not identified. *See Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*. Accordingly, a "bond" is not required. However, even if a bond were required, FCM Kohler testified the foster parent and Child were bonded. *See* Tr. p. 108. We therefore affirm the trial court's conclusion.

[24] Affirmed.

May, J., and Molter, J., concur.