

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of A.J. (Minor Child);

M.J. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 19, 2023

Court of Appeals Case No.
23A-JT-66

Appeal from the St. Joseph Probate
Court

The Honorable Jason A.
Cichowicz, Judge

Trial Court Cause No.
71J01-2201-JT-11

Memorandum Decision by Judge Tavitias
Judges Bailey and Kenworthy concur.

Tavitas, Judge.

Case Summary

- [1] M.J. (“Mother”) appeals the termination of her parental rights to A.J. (“Child”). Despite Mother’s convictions for molesting A.J. and aiding in the molestation of A.J. and Mother’s forty-five-year sentence for her convictions, Mother challenges the trial court’s termination of her parental rights. We find her arguments unpersuasive, and we affirm.

Issues

- [2] Mother raises two issues, which we restate as:
- I. Whether Mother’s due process rights were violated by the failure to provide her with reunification services.
 - II. Whether the trial court’s termination of Mother’s parental rights is clearly erroneous.

Facts

- [3] The Child was born to Mother and (“Father”) (collectively, “Parents”) in December 2011.¹ In April 2017, the Department of Child Services (“DCS”) removed the Child from Parents due to allegations of sexual abuse and neglect.

¹ Father’s parental rights were also terminated, and Father is not a party to this appeal.

A criminal investigation revealed that Parents were sexually abusing the Child. Parents were arrested and charged as a result of the allegations.

- [4] DCS filed a petition alleging that the Child was a child in need of services (“CHINS”) under Indiana Code Section 31-34-1-1 due to neglect and under Indiana Code Section 31-34-1-3 because the Child was the victim of child molesting. Parents admitted that the Child was a CHINS.
- [5] In September 2017, Father pleaded guilty to two counts of child molesting, Level 1 felonies, and he was sentenced to sixty-five years in the Department of Correction (“DOC”). As part of the sentence, Father was ordered to have no contact with the Child. In December 2017, the trial court found that, pursuant to Indiana Code Section 31-34-21-5.6(b), reasonable efforts for reunification with Father were not required because Father was convicted of child molesting.
- [6] The trial court entered a dispositional decree, which ordered Mother to maintain contact with DCS, follow the treatment plan outlined by Logansport State Hospital, and follow the no contact order.²
- [7] In March 2019, Mother pleaded guilty to aiding or causing child molesting, a Level 1 felony, and child molesting, a Level 1 felony. Mother was sentenced to forty-five years in the DOC. As part of the sentence, Mother was ordered to have no contact with the Child. On June 4, 2019, the trial court found that,

² Mother was found incompetent in the criminal proceedings and placed in the Logansport State Hospital until her competency was restored.

pursuant to Indiana Code Section 31-34-21-5.6(b), reasonable efforts for reunification with Mother were not required because Mother was convicted of child molesting.

[8] In January 2022, DCS filed a petition to terminate Parents’ parental rights. The trial court held a fact-finding hearing in September 2022, and entered an order terminating Parents’ parental rights. Mother now appeals.

Discussion and Decision

[9] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental rights are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[10] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections

(a) and (b)” when granting a petition to terminate parental rights.³ Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s parental rights. We will affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

I. Due Process

[11] Mother contends that her due process rights were violated because DCS did not provide reunification services to her. First, Mother did not raise this argument to the trial court, and the issue is waived. *See, e.g., McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003) (holding that the parent “waived any due process challenge to the adequacy of the CHINS

³ Indiana Code Section 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

proceeding because she did not object during that proceeding or raise her constitutional claim at the termination hearing”).

[12] Waiver notwithstanding, Mother’s argument fails. The State must satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution when it seeks to terminate the parent-child relationship. *S.L. v. Indiana Dep’t of Child Servs.*, 997 N.E.2d 1114, 1120 (Ind. Ct. App. 2013). Due process in parental-rights cases involves the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing government interest supporting the use of the challenged procedure. *Id.* (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). The private interest affected by the proceeding—a parent’s interest in the care, custody, and control of his or her child—is substantial. *Id.* The State’s interest in protecting the welfare of a child is also substantial. *Id.* We, thus, focus on the risk of error created by DCS’s actions and the trial court’s actions. *Id.*

[13] Here, Indiana Code Section 31-34-21-5.6(b) provides that “[r]easonable efforts to reunify a child with the child’s parent . . . are not required if the court finds” the parent has been convicted of child molesting and the victim was the parent’s biological child. We have held that, “[b]ecause Indiana Code Section 31-34-21-5.6 serves a compelling state interest and is narrowly tailored to serve that interest, it does not violate substantive due process under the Indiana and United States Constitutions.” *G.B. v. Dearborn Cnty. Div. of Fam. & Child.*, 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001), *trans. denied.*

[14] Moreover, there is no risk of error here. Services were not provided to Mother because Mother was convicted of molesting the Child and sentenced to forty-five years in the DOC. As part of her sentence, Mother is not allowed to have contact with the Child. Accordingly, as the State points out, “[r]eunification was out of the question” Appellee’s Br. p. 15. Mother has failed to demonstrate a due process violation.

II. Sufficiency of the Evidence

[15] Next, Mother challenges the sufficiency of the evidence to support the termination of her parental rights. We first note that Mother has failed to make a cogent argument and, therefore, has waived this claim. *See, e.g., N.C. v. Indiana Dep’t of Child Servs.*, 56 N.E.3d 65, 69 (Ind. Ct. App. 2016) (“A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”), *trans. denied*.

[16] Waiver notwithstanding, Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

(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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

A. Remedy of Conditions and Threat to Well-Being of Child

[17] Mother argues that the State failed to prove that there is: (1) 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; or (2) a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Child. Indiana Code Section 31-35-3-8, however, provides:

A showing that an individual has been convicted of an offense described in section 4(1) of this chapter is prima facie evidence that there is a reasonable probability that:

(1) the conditions that resulted in the removal of the child from the parent under a court order will not be remedied; or

(2) continuation of the parent-child relationship poses a threat to the well-being of the child.

Child molesting is an offense described in Indiana Code Section 31-35-3-4(1).

“‘Prima facie’ means such evidence as is sufficient to establish a given fact and which will remain sufficient if uncontradicted.” *In re E.P.*, 20 N.E.3d 915, 921 (Ind. Ct. App. 2014), *trans. denied*.

[18] Mother was convicted of molesting the Child and will be incarcerated long into the Child’s adult years. Mother presented no evidence to overcome the prima facie evidence standard. The trial court’s findings on these factors are not clearly erroneous.

B. Best Interests of the Child

[19] Mother challenges the trial court’s finding that termination of her parental rights is in the Child’s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Ma.H.*, 134 N.E.3d at 49. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and 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.*

[20] The Child is severely traumatized by the abuse she suffered at the hands of Parents. Any reminder of Parents re-traumatizes her. The family case manager testified that the Child is undergoing “an ongoing, life-long healing process” and she “needs to move on.” Tr. Vol. II pp. 19-20. Any continued relationship with Parents “will affect her ability to move on.” *Id.* at 19. The CASA testified that the Child needs “permanency” and “needs to be able to move on and get past all this trauma that her parents have put her through” *Id.* at 34. Under these circumstances, the trial court’s finding that termination of Mother’s parental rights is in the Child’s best interests is not clearly erroneous.

Conclusion

[21] Mother’s due process rights were not violated, and the trial court’s termination of Mother’s parental rights is not clearly erroneous. We affirm.

[22] Affirmed.

Bailey, J., and Kenworthy, J., concur.