

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
M.S. (Minor Child) and T.S.
(Mother)

T.S. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 6, 2022

Court of Appeals Case No.
21A-JT-2144

Appeal from the
Jefferson Circuit Court

The Honorable
Donald J. Mote, Judge

Trial Court Cause No.
39C01-2001-JT-1

Vaidik, Judge.

Case Summary

- [1] T.S. (“Mother”) appeals the termination of her parental rights to her daughter. We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of M.S. (“Child”), born in 2012, and E.F., born in 2018. Child and E.F. have different biological fathers. R.L. (“Father”) is Child’s biological father.
- [3] On July 15, 2018, E.F., around four months old, was in Mother’s care when he died of acute methamphetamine ingestion. On July 19, Child was removed from Mother and placed in foster care. The Department of Child Services (DCS) filed a petition alleging M.S. was a child in need of services (CHINS). Mother admitted Child was a CHINS. Father’s whereabouts were unknown. DCS served Father by publication, but he didn’t respond or appear. The trial court “entered an order defaulting [Father] by publication.” Ex. p. 36 (cleaned up).
- [4] In September 2018, the State charged Mother with several offenses in connection with E.F.’s death, including Level 1 felony neglect of a dependent resulting in death. In September 2019, Mother pled guilty to Level 1 felony neglect and was sentenced to twenty-four years in the Department of Correction (DOC). According to the DOC’s website, Mother’s earliest possible release date is September 2034, when Child will be twenty-two years old.

- [5] In January 2020, DCS petitioned to terminate Mother’s and Father’s parental rights to Child. At first, DCS proceeded as to Father only because Mother had signed a consent for Child to be adopted by a specific foster family and an agreement giving her some post-adoption contact with Child. Father was again served by publication but didn’t respond or appear, and his parental rights were terminated “by default” in May 2020. *See id.* at 40.
- [6] The next month, June 2020, Child’s “pre-adoptive family abruptly kicked [her] out of their home and decided not to adopt her,” nullifying Mother’s agreement with the foster family. Appellant’s App. Vol. II p. 15. Child then had multiple placements. At Mother’s request, Child was placed with another pre-adoptive family in March 2021. But when that “placement disrupted” in June 2021, DCS proceeded with terminating Mother’s parental rights. *Id.* at 16.
- [7] A fact-finding hearing was held in August 2021. At the time, Child was in a foster home (which hadn’t ruled out adopting Child). However, Mother’s first cousin in Kentucky was interested in adopting Child, and Child had visited him several times. Before the hearing, the parties stipulated on the record to many things, including the procedural history of the case starting with the CHINS petition; the circumstances of Mother’s crime, conviction, and sentence; and the failed placements for Child. *See Tr.* pp. 5-7. Based on these stipulations, “the parties agree[d] that the only issue before the Court today is whether termination of Mother’s parental rights is in the child’s best interest.” *Id.* at 7, 26; Appellant’s App. Vol. II p. 16 (Finding 16).

[8] DCS Family Case Manager (FCM) Laura Macon testified DCS had recently learned that Mother’s cousin was interested in adopting Child. FCM Macon said if Mother’s parental rights are terminated and “the ICPC is accepted in Kentucky,” the plan “would be to place [Child] there, and then proceed with the adoption process.” Tr. p. 20. Child, however, would have to stay in the home for six months before an adoption could be finalized.

[9] Jennifer Carroll, an adoption consultant with DCS, testified Child is “a hard-to-place child” because of her age, “multiple failed previous adoptive placements,” and “the behaviors that [Child] displayed that were the cause of those failed adoptive placements,” including trying “to light [a] dog on fire” and “safety” concerns with other children in the home. *Id.* at 9. Carroll testified that when a parent’s parental rights “are still intact,” there aren’t as many “recruitment options” for the child. *Id.* at 10. As Carroll explained:

If the child is legally free and both parents’ rights are terminated, that opens up more recruitment options in that we have families that are considered adopt-only, and they are not licensed foster parents, and they can only take children who are legally free. Children who are legally free, we can also recruit out of state, and look at families who live out of the State of Indiana, and we can only do that if they are legally free as well.

Id.

[10] Brittany Demaree, Child’s Court Appointed Special Advocate (CASA), testified terminating Mother’s parental rights is in Child’s best interests because Mother, who had not seen Child since 2018 and whom Child had never asked about,

will “be incarcerated for the remainder of [Child’s] childhood, and into her early adulthood.” *Id.* at 13. CASA Demaree explained that Child had been in foster care for three years in five homes, two of which “were forever homes that had failed.” *Id.* CASA Demaree said Child “desperately wants her forever home” and if Mother’s parental rights are terminated, “that will expand the horizon for more potential families for [Child].” *Id.* CASA Demaree acknowledged Mother’s cousin was interested in adopting Child, but she said that would take some time and wasn’t guaranteed, as other placements had fallen through, too.

[11] Finally, Mother testified she would sign an adoption consent (like she had done before) for her cousin to adopt Child. But she didn’t want her parental rights to be involuntarily terminated because she wanted to sign an agreement that would give her some post-adoption contact with Child.

[12] The trial court issued an order terminating Mother’s parental rights to Child. The court found termination is in the best interests of Child because Father’s parental rights had already been terminated and Mother will be in prison until Child is a young adult and therefore cannot raise her. Appellant’s App. Vol. II pp. 17 (Finding 20), 19 (Conclusion 33). The court added that terminating Mother’s parental rights will “significantly increase [Child’s] chances of being adopted.” *Id.* at 17 (Finding 24); *see also id.* at 19-20 (Conclusions 34-36).

[13] Mother now appeals.

Discussion and Decision

[14] Mother appeals the termination of her parental rights to Child. 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 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 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).

[16] At the fact-finding hearing, Mother and DCS stipulated that the only issue before the trial court was whether termination is in Child’s best interests.¹ We therefore address only this conclusion. Deciding whether termination is in a child’s best interests is “[p]erhaps the most difficult determination” a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). The court must look at the totality of the evidence and subordinate the parent’s interests to those of the child. *Id.* Central among these interests is the child’s need for permanency, as the child cannot wait “indefinitely.” *Id.*

[17] Mother first argues the fact she is incarcerated, by itself, doesn’t mean termination is in Child’s best interests. *See* Appellant’s Br. p. 9 (citing *K.E. v.*

¹ Mother argues the trial court’s legal conclusions that there is a reasonable probability the conditions resulting in Child’s removal will not be remedied and that continuation of the parent-child relationship poses a threat to Child’s well-being are not “sufficiently supported by and related to the factual findings.” Appellant’s Br. p. 14. But as the State responds, the trial court did not do so because of the parties’ stipulation that the only issue to be determined was best interests. Mother did not file a reply brief challenging this stipulation.

Ind. Dep't of Child Servs., 39 N.E.3d 641 (Ind. 2015)). While this is true, the trial court didn't rely solely on the fact that Mother is incarcerated. Rather, the court relied on the fact that Father's parental rights had already been terminated, Mother will be in prison until 2034 (when Child will be twenty-two years old), and there is no one to raise Child.

[18] Mother next argues termination is not in Child's best interests because she "has maintained her willingness to consent to an adoption . . . as long as she can maintain contact with the child's adoptive family." Appellant's Br. p. 13. In other words, Mother wanted DCS to postpone termination to see if things worked out with her cousin in Kentucky. But termination of Mother's parental rights had already been delayed for eighteen months for this very reason. When DCS petitioned to terminate Mother's and Father's parental rights in January 2020, it proceeded as to Father only because Mother had consented to Child being adopted by a specific family that would allow her some post-adoption contact with Child. When that adoption didn't work out, Mother eventually found another pre-adoptive placement, which fell through in June 2021. The termination hearing was then held in August. The court didn't have to wait any longer. This is especially so given Child is "a hard-to-place child" because of her age, failed placements, and behaviors exhibited during those placements. As the adoption consultant and CASA testified, terminating Mother's parental rights would open up more recruitment options for Child, which is in her best interests. The trial court did not err when it concluded termination is in Child's best interests.

[19] **Affirmed.**

Crone, J., and Altice, J., concur.