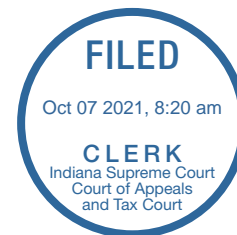


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Miriam Huck
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

B.R. and B.J.R. (Minor Children), and

L.R. (Mother),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

October 7, 2021

Court of Appeals Case No.
21A-JT-560

Appeal from the Bartholomew Circuit Court

The Honorable Lindsey Holden-Kay, Magistrate

Trial Court Cause No.
03C01-2007-JT-3290
03C01-2007-JT-3291

Bailey, Judge.

Case Summary

- [1] L.R. (“Mother”) appeals the termination of her parental rights to B.R., born April 9, 2012, and B.J.R., born October 3, 2014, (“Children”) upon the petition of the Bartholomew County Department of Child Services (“the DCS”). Mother presents the issue of whether the order of termination is clearly erroneous because the DCS failed to establish, by clear and convincing evidence, the requisite statutory elements to support the termination decision. We affirm.

Facts and Procedural History

- [2] On April 2, 2019, DCS family case manager Brooke Waltz (“Waltz”) was called to the Columbus Police Department to take emergency physical custody of Children. Despite the forty-degree temperature, neither child had a jacket or coat, and they smelled of urine. Waltz was advised that both parents¹ were incarcerated in the Bartholomew County Jail and Mother’s boyfriend, who had been caring for Children, had just been arrested for allegedly shoplifting. B.R. reported to Waltz that she and her sibling had been living in a car, and that they were “fairly often” hungry. (Tr. Vol. II, pg. 13.) B.R. could not recall when she last attended school. She further reported that her caregiver had been smoking from a glass pipe.

¹ The parental rights of Children’s father were also terminated, but he is not an active party to this appeal.

[3] On the same day, the DCS filed petitions alleging that Children were Children in Need of Services (“CHINS”). On May 14, 2019, Mother admitted that Children were CHINS due to a lack of stable housing and Mother’s history of substance abuse. She was ordered to, among other things: participate in home-based services; attend supervised child visits; complete a substance use assessment and follow any recommendations; maintain contact with the DCS; refrain from use of illegal substances; obtain a stable source of income; and secure stable housing. On May 30, 2019, Children were placed in the custody of their maternal aunt.

[4] Mother participated in services sporadically. She visited Children twice, but one visit was cut short because Mother had slurred speech and was “nodding out.” (*Id.* at 76.) Mother did not maintain sufficient contact with DCS to provide regular drug screens, but the intermittent drug screens revealed that Mother was, at times, using methamphetamine, marijuana, amphetamine, and Suboxone.² She completed a drug use assessment but did not complete recommended intensive outpatient therapy. Mother worked with a home-based counselor with goals of securing housing and employment. As of September 30, 2019, each of Mother’s referrals for services had been closed due to lack of engagement. Some additional service referrals were made, with limited results.

² In December of 2020, Mother reportedly obtained a prescription for Suboxone (buprenorphine). Mother did not produce a valid prescription when the earlier drug screens were conducted.

Mother eventually maintained part-time employment for several months but remained homeless.

[5] At the permanency hearing conducted on June 1, 2020, the DCS alleged that Mother had been non-compliant with services and had not visited Children since April 2019. Children’s permanency plan was changed to termination of parental rights and adoption, with a concurrent plan of parental reunification. On July 10, 2020, the DCS petitioned to terminate Mother’s parental rights. A fact-finding hearing was conducted on January 8, 2021. On March 2, 2021, the trial court entered its findings, conclusions, and order terminating Mother’s parental rights. Mother now appeals.

Discussion and Decision

[6] At the outset, we acknowledge that “[t]he Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Ofc. of Fam. & Children (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[7] Before an involuntary termination of parental rights can occur in Indiana, the DCS is required to allege and prove, in relevant part:

(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.

* * *

(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). The statute employs disjunctive language and thus the DCS need establish only one of the requirements of subsection (b)(2)(B)

before the trial court may terminate parental rights. The DCS is required to prove that termination is appropriate by a showing of clear and convincing evidence, a higher burden than establishing a mere preponderance. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[8] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Id.* at 1143. Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). In order to determine whether a judgment terminating parental rights is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

[9] Mother does not contend that the DCS presented insufficient evidence as to the removal period or satisfactory plan. She first focuses upon whether there is clear and convincing evidence of a reasonable probability that she would fail to remedy the conditions that led to Children's removal. She maintains that she was making progress toward her goals. A focus upon whether conditions are likely to be remedied invokes a "two-step analysis." *In re E.M.*, 4 N.E.3d 636,

643 (Ind. 2014). First, we identify the conditions that led to removal; and second, we must determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* In the second step, the trial court must judge parental fitness as of the time of the termination hearing, taking into consideration the evidence of changed conditions. *Id.* “[I]t is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent’s rights should be terminated, but also those bases resulting in the continued placement outside of the home.” *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005).

[10] The trial court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct. *In re E.M.*, 4 N.E.3d at 643. The trial court has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.* Habitual conduct may include parents’ criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider the services offered to the parent by the DCS and the parent’s response to those services as evidence of whether conditions will be remedied. *Id.* The DCS need not present evidence to rule out every possibility of change; rather, it must establish that there is a reasonable probability that parental behavior will not change. *Id.*

[11] Mother does not challenge the trial court's factual findings as being clearly erroneous. The unchallenged findings include the following:

Lifeline [Youth and Family Services] first received a referral from DCS for [Mother] in May 2019. That referral was closed about a month later, due to lack of engagement from [Mother].

Lifeline received a second referral from DCS for [Mother] in November 2019. Susan Weddle was the home-based case worker assigned to work with [Mother]. Ms. Weddle worked with [Mother] from November 2019 to March 2020.

Susan Weddle began working with [Mother] in November 2019, with the goals of connecting to community resources, obtaining and maintaining sobriety, employment, housing, domestic violence education, and parenting. Ms. Weddle reported that during their work together [Mother] continued to test positive for methamphetamine and THC. Ms. Weddle testified that there was very little progress made toward the goal of sobriety, minimal progress made toward the goal of employment, and no progress made toward the goal of obtaining housing. ...

Suzanne Probst of Lifeline Community-Based Services testified that she began working with [Mother] when [Mother] moved to Bloomington, Indiana. Ms. Probst provided services to [Mother] from March 2020 through September 2020. [Mother] was arrested for possession of methamphetamine in May 2020. However, Ms. Probst testified that during their work together, [Mother] used her informal supports well and gained employment at Rally's in August 2020. [Mother] has maintained that employment to present. Ms. Probst also testified that during her work with [Mother], she continued to communicate with Richard, a former boyfriend who had been abusive to her. ...

Leanne Elkins of National Youth Advocate Program testified regarding a visit that she supervised between [Mother] and the children in April 2019. [Mother] arrived on time to that visit but had slurred speech and did not engage with the children. [Mother] appeared to be asleep on multiple occasions. Ms. Elkins was unable to wake [Mother], and the visit was ended after one hour. Ms. Elkins attempted to reach out to [Mother] after that visit to schedule additional visits. [Mother] did not make contact with Ms. Elkins.

Jennifer Jagers of Centerstone testified that Centerstone first received a referral for [Mother] on November 20, 2019. A substance abuse evaluation was scheduled for December 10, 2019. [Mother] did not attend that appointment. [Mother] never made contact with Centerstone to reschedule her appointment. Due to a lack of contact from [Mother], the referral was closed on March 16, 2020. Another referral for a substance abuse evaluation was received by Centerstone in March 2020. An evaluation was scheduled for March 31, 2020. [Mother] did not attend that appointment. Another evaluation was scheduled for April 7, 2020. [Mother] did attend that appointment and completed her evaluation. [Mother] was recommended to complete Women's IOP. [Mother] did not participate in or complete Women's IOP. That referral was closed in July 2020, due to noncompliance and lack of contact. Another referral for a substance abuse evaluation was received in September 2020. [Mother] attended her appointment and completed her evaluation. IOP was again recommended. Since November 2, 2020, [Mother] has attended 7 out of 40 scheduled IOP meetings. The last IOP class that [Mother] attended was on November 12, 2020.

Brandon Nielsen works at Treatment and Support Center (TASC) in Columbus, Indiana. [Mother] came to TASC to seek treatment in December 2020. [Mother] will begin services on January 11, 2021. [Mother] has submitted to three drug screens

at TASC. On December 22, 2020, [Mother] tested positive for methamphetamine. On December 31, 2020, [Mother] tested positive for amphetamine and Suboxone. [Mother]'s third screen was positive for marijuana and Suboxone. ...

FCM Fields documented between ten (10) and twelve (12) location changes for [Mother] throughout the pendency of the CHINS case. . . . FCM Fields does not have a current address form [for Mother] as she has been sometimes staying with her sister and at other times staying with a friend in various hotels. [Mother]'s longest time in one location has been approximately six (6) weeks. . . .

This Court permitted [Mother] to begin phone visits on October 22, 2020. [Mother] was permitted to have supervised phone contact once per week for fifteen (15) minutes at a time. [Mother] attended the phone calls with the children but noted concerns were expressed by the therapist for [B.R.] who monitored the calls. On at least one occasion, the therapist believed that [Mother] was under the influence during the call. ...

[Mother] submitted to drug screens during the CHINS case but was not consistent in submitting to screens. [Mother] was difficult to locate to obtain screens or did not show up for requests for screens.

Appealed Order at 7-10.

[12] The findings have evidentiary support. The testimony of service providers indicates that Mother participated in services to varying degrees. She eventually completed a substance use assessment but had not completed any recommended treatment program. On December 26, 2019, she entered a thirty-day inpatient program but checked out in mid-January. She had only two in-

person visits with Children, and thereafter did not provide clean drug screens so that additional visits could be scheduled. Telephonic visits were discontinued because Mother appeared to be under the influence of a substance. Mother obtained part-time employment but lacked stable housing. Historically, she has been unable or unwilling to maintain a safe, drug-free, and stable home for Children.

[13] Mother directs our attention to testimony that, as of the fact-finding hearing, she was scheduled to enter a drug treatment program, had been offered a second job, and had located a house trailer for rent. Mother's efforts are commendable; however, it was within the province of the trial court to accord Mother's history more weight than her recent efforts. *See In re E.M.*, 4 N.E.3d at 643. In sum, the DCS presented sufficient evidence of a reasonable probability that conditions leading to Children's removal – lack of stability and drug use – would not be changed.

[14] Mother also argues that termination of her parental rights is not in Children's best interests. She acknowledges the need for permanency and stability in a child's life but argues that she was making progress toward stability. According to Mother,

[t]he terms “stability” and “permanency” were brought up numerous times by DCS and service providers without much in the way of specific evidence as to why termination was in the Children's best interests. Most statements were speculative concerning what the children “may” experience if permanency was delayed. Mother was not asking for years to show continued

progress in her case. Instead, she was asking for six (6) months or less to obtain and maintain stability and sobriety. Further, no evidence was presented that current placement would be unwilling to adopt the Children if termination was delayed.

Appellant's Brief at 10-11.

[15] In determining what is in a child's best interests, the trial court is required to look beyond the factors identified by the DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the trial court must subordinate the parent's interests to those of the child. *Id.* The trial court need not wait until the child is irreversibly harmed before terminating parental rights. *Id.* "The historic inability to provide adequate housing, stability, and supervision, coupled with the current inability to provide the same, will support a finding that continuation of the parent-child relationship is contrary to the child's best interests." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

[16] Children had been in the home of their maternal aunt for nineteen months, and she was willing to adopt them. Children's therapists opined that Children had bonded with their aunt and their needs were being met in the home. Children's Court-Appointed Special Advocate and family case manager each opined that termination of parental rights was in Children's best interests. And while Mother expressed hopes for greater stability in the future, she had very recently failed drug screens and she lacked housing or full-time employment. The DCS

presented sufficient evidence that termination of parental rights is in Children's best interests.

Conclusion

[17] The DCS established by clear and convincing evidence the requisite elements to support the termination of parental rights.

[18] Affirmed.

Crone, J., and Pyle, J., concur.