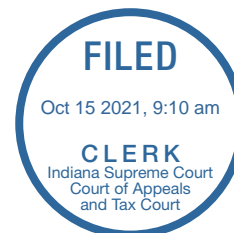


MEMORANDUM DECISION

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
Ad.W., An.W., I.W., and M.W.,
and M.G. (Mother) and D.W.
(Father)

M.G. (Mother) and
D.W. (Father),

Appellants-Respondents,

v.

October 15, 2021

Court of Appeals Case No.
21A-JT-691

Appeal from the
Lake Superior Court

The Honorable
Thomas P. Stefaniak, Jr., Judge

Trial Court Cause Nos.
45D06-2009-JT-122
45D06-2009-JT-123
45D06-2009-JT-124
45D06-2009-JT-125

Indiana Department of Child
Services,
Appellee-Petitioner

Vaidik, Judge.

Case Summary

- [1] M.G. (“Mother”) and D.W. (“Father”) appeal the termination of their parental rights to their four children. We affirm.

Facts and Procedural History

- [2] Mother and Father (collectively, “Parents”) have four children, Ad.W., born in December 2013, An.W., born in January 2016, I.W., born in October 2016, and M.W., born in March 2018. While all the children have developmental disabilities and medical issues, I.W. has been diagnosed with Wolf Hirschhorn syndrome, has “a team of doctors” at Riley Hospital for Children, and receives “intensive” medical care. Tr. p. 42.
- [3] On July 6, 2017, Parents went to a Family General store in Hammond with Ad.W., An.W., and I.W. (M.W. wasn’t born yet). Parents were caught shoplifting, and the police were called. The police apprehended Mother, but

Father, who was on parole in Illinois and had fifteen bags of marijuana on him, fled, leaving I.W. alone in her stroller on the sidewalk. Parents had no supplies for I.W., other than a bottle of watered-down juice, and the children were hungry. Mother was arrested for conversion and taken to jail. Because there was no available caregiver, the Department of Child Services (DCS) removed the children and placed them at St. Joseph Carmelite Home (they were later placed in foster care). The next day, DCS filed a petition alleging the children were children in need of services (CHINS).

[4] On August 1, the trial court found the children were CHINS. Following the dispositional hearing, the court ordered Parents to, among other things, complete a parenting assessment and follow any recommendations, complete a substance-abuse assessment and follow any recommendations, not use drugs and alcohol, undergo random drugs screens, maintain safe and suitable housing, secure and maintain a legal source of income, meet all medical and mental-health needs of themselves and the children, and have supervised visits with the children.

[5] M.W. was born in March 2018 and lived with Mother. In November, DCS received a report Mother was neglecting M.W., then seven months old. M.W. was removed from Mother and placed in foster care. DCS filed a petition alleging M.W. was a CHINS because, among other things, Mother didn't provide M.W. with necessities or adequately feed her. In January 2019, the trial court found M.W. to be a CHINS.

[6] In September 2020, DCS filed a petition to terminate Parents' parental rights to the children. A remote fact-finding hearing was held in March 2021. The children ranged in age from two to seven years old and had been living together in a pre-adoptive foster home for the past eight months. Family Case Manager (FCM) Laura Passmore, who had worked with the family since July 2017, and Jennifer Wilson, Mother's home-based case manager since July 2017, testified for DCS.

[7] According to FCM Passmore, neither Mother nor Father had a job. Although Mother had different jobs throughout the case, her employment was "sporadic" and lasted only three to five months at a time. *Id.* at 30. Father, who dealt drugs most of his life, always claimed to have a job; however, he produced only two pay stubs since 2017. According to FCM Passmore, Parents lacked "legal income of any kind." *Id.* at 26.

[8] FCM Passmore also testified about Parents' struggles to maintain housing. Although Mother had housing at the time of the hearing, she struggled to pay rent and utilities. In addition, she had changed residences "nine times" (including living in homeless shelters three times); the number for Father was "unknown" since he "often [moved] between relatives." *Id.* at 27. When Mother had housing, it was "routinely below minimum standards in regard to cleanliness." *Id.* at 26. FCM Passmore described her October 2020 visit to Mother's home as follows:

There was a butcher knife on the nightstand in one of the bedrooms. I asked to see where they stored the medications, as

well as to see the medication, [Mother] found it in random places. There was medication under the tv stand in the living [room] that had access to the children. She couldn't locate . . . some of the medication. She found some in the closet that was on a pile of clothing that was about knee high deep in the closet. When she went to the medicine cabinet in the bathroom, I believe that, if I recall correctly, there was only one bottle in there, but everything else, medication was in other locations. This has been an ongoing issue. The bedrooms were in disarray. The floor was dirty. There was garbage on the floor. There was a lack of food in the refrigerator in the kitchen. I did address the moldy apple juice on the counter, that this FCM saw four dead insects in. The kitchen did have tons of gnats in it.

Id. at 28. FCM Passmore tried to visit again on twelve occasions, but Parents were never home.

[9] FCM Passmore also testified about Parents' drug use and mental-health issues. Mother took and passed nearly every drug screen, although she tested positive for marijuana a couple times. Father, however, was a different story. He was ordered to undergo 227 random drug screens but participated in only 57. *Id.* at 31. And when Father underwent drug screens, they were often positive, including for marijuana and methamphetamine. Father, who admitted he had a drug problem, completed a thirty-day inpatient program in May 2019. However, when he was released, he "never stepped down into the intensive outpatient treatment" that was required and started testing positive for drugs again shortly thereafter. *Id.* at 24. Parents also had mental-health issues, including depression, anxiety, and mood instability, but they didn't take their prescribed medicine regularly.

[10] FCM Passmore also testified about Parents' supervised visits with the children. As she explained, there are "five steps" for a child to go from supervised visits to reunification with a parent; however, Parents never moved past step one. *Id.* at 38. This was based on "safety concerns" during the visits (such as feeding the children food so hot it melted plastic utensils), not having enough food for the visits, not demonstrating they could provide medical care to I.W. during the visits, and a "pattern of them not showing up or being able to confirm their visits when [they were] supposed to visit." *Id.*

[11] FCM Passmore acknowledged Parents said they wanted their children back. But she said Parents never did what was required of them. As FCM Passmore put it, although Parents made "strides," there were always "setbacks." *Id.* at 50. She said of all the services Parents were ordered to complete since 2017, Father is the only one who completed a service but even that was unsuccessful. *See id.* at 24. Meanwhile, the children were "doing excellent" and "thriving" in their pre-adoptive placement. *Id.* at 45. FCM Passmore said it was in the best interests of the children for Parents' rights to be terminated because the children need "a permanent stable home, that's clean" and "all their needs met." *Id.* at 46.

[12] Wilson, Mother's home-based case manager, testified similarly. She said Mother struggled to maintain housing and that when she had housing, it was often unclean and unsafe:

It goes beyond just the normal clutter, like a messy table with a stack of papers. At times, and as most recent I was at the home,

last Thursday, and when I was in the home, I believe it was February 25th, there were bullets in a box on the table. There was . . . spoiled food, empty food containers, there was a lighter on the floor next to the water heater. There were cleaning supplies where the children could reach them, hot plates plugged in on the floor. There was cat feces that she had been attempting to get up, dried cat feces for over six months. There's been situations where I've gone in there and there's dozens of fruit flies or gnats swarming around. . . .

The bullets . . . were labeled 22's. They were on a small end table that all of her children would have been able to access, all four of her children. The food items, the soiled food, the food had been rotting for days, those were all in the reach of children. The garbage that had been stacked up, torn open by, I'm assuming the cat that lived in the home, that was sitting in the stairwell that was accessible to the children. Often there's pills, prescription medication, psychotropic medications that can't be located in the home. They are supposed to be there, but we can't find them, or [Mother] can't find them, should I say. There's been times when I observed the medication on the TV stand or the bottom of the TV stand in the open to where a child could reach them. It's an ongoing issue.

Id. at 56-57; *see also id.* at 60. Although Mother had lived in her current home for about a year, Wilson had concerns about the payment of rent going forward because Parents were unemployed. Wilson elaborated on Mother's "inconsistent" employment:

She often will work a job a few months and then either leaves it or be terminated or have to leave. There have been reports that [Father] has shown up to a few of her places of employment, threatening [Mother], fighting with [Mother], and also threatening [Mother's] coworkers, including her supervisor.

There's been situations where [Mother] simply just can't get to work, regardless, if she's within walking distance. Her time management doesn't allow her to get up on time or to get there on time routinely. I believe this previous job that she reported to have lost within this last month at McDonald's was within[] a few miles of her home and she said she was terminated because she was late and a no-show.

Id. at 58.

[13] Following the hearing, the trial court entered an order terminating Parents' parental rights to the children.

[14] Parents now appeal.¹

Discussion and Decision

[15] Parents contend 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

¹ Mother and Father are represented by different attorneys on appeal. Mother's attorney filed a 22-page brief and a 41-page appendix at the end of June 2021. A few days later, Father's attorney filed a 22-page brief and a 41-page appendix that are virtually identical to the documents submitted by Mother's attorney. Notably, Father's brief is virtually identical to Mother's brief even though Mother's brief focuses on facts and issues relating to her. Having two identical briefs and two identical appendices is a waste of time and resources that benefits no one.

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).

[16] 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. *In re 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).

A. Conditions Remedied

[17] Parents challenge the trial court’s conclusion there is a reasonable probability the conditions resulting in the children’s removal from the home will not be remedied.² In determining whether the conditions resulting in a child’s removal 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. *In re 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).

[18] Here, the children were removed from Parents because they could not provide them with a safe and stable environment. On appeal, Parents do not dispute they still needed to complete services; however, they claim they made some progress and “only need a short period of additional time in which to complete

² The trial court also concluded there is a reasonable probability the continuation of the parent-child relationship poses a threat to the well-being of the children; however, Parents do not challenge this conclusion. Because Section 31-35-2-4(b)(2)(B) is written in the disjunctive, the court needed to find only one of the elements: (1) the conditions resulting in the children’s removal will not be remedied or (2) continuation of the parent-child relationship poses a threat to the well-being of the children. Although we could affirm the court under the unchallenged conclusion, we will address Parents’ argument given the important parental interests at stake.

any services that were outstanding.” Mother’s Br. p. 17; Father’s Br. p. 17. While Parents have made some progress since 2017 (including attending most court hearings and DCS team meetings), they have also experienced setbacks and thus are no closer to properly caring for the children now than they were at the beginning of the case. Parents have had three-and-a-half years to complete services. Yet, Father is the only one to have completed a service—inpatient drug treatment in May 2019—but he never completed the required outpatient program and started testing positive for drugs again shortly thereafter. Parents have also struggled to maintain housing and employment. Mother changed residences nine times, while the number for Father was “unknown” since he “often [moved] between relatives.” Although Mother had housing at the time of the termination hearing, she struggled to pay rent and utilities. And when Mother had housing, it was often unclean and unsafe for children.³ In addition, Parents did not have jobs. While Mother had several jobs throughout the case, she could not maintain employment for more than a few months at a time. Moreover, Parents were never able to move past supervised visits with the children due to safety issues and not being able to provide medical care to I.W.

³ Parents argue DCS did not present any evidence Mother’s home failed to meet minimum standards and that DCS’s witnesses applied their own standards of cleanliness to her home. *See* Mother’s Br. pp. 15-16, 18-19; Father’s Br. pp. 15-16, 18-19. But as detailed above in the facts section, FCM Passmore and Wilson gave specific examples of how Mother’s home was unclean and unsafe. In addition, the trial court admitted into evidence DCS’s progress reports, which also discuss the condition of Mother’s home at various points throughout this case. *See, e.g.*, Ex. Vol. I p. 46 (Mother’s home was in “disarray” and “infested with cockroaches”), Ex. Vol. II p. 17 (Mother’s home was “trashed” and “smelled so bad”).

[19] The trial court did not err when it concluded there is a reasonable probability the conditions resulting in the children's removal will not be remedied.

B. Best Interests

[20] Parents also challenge the trial court's conclusion termination is in the best interests of the children. 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 parents 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] As explained above, Parents have not shown the ability to provide the children with a safe and stable environment. Despite three-and-a-half years of involvement with DCS, Parents have not completed services. They have also struggled to maintain employment and clean housing. Father continued to test positive for drugs, and Parents did not take care of their mental-health needs or I.W.'s medical needs. Because of these failings and others, Parents never moved past supervised visits with the children. This constant instability is not in the children's best interests. *See In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App.

2005) (“[T]he 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.”). Furthermore, FCM Passmore testified the children are doing well in their pre-adoptive placement, where they can be together and their needs are being met, and she believed it in their best interests to terminate.

[22] The trial court did not err when it concluded termination is in the children’s best interests.

[23] Affirmed.

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