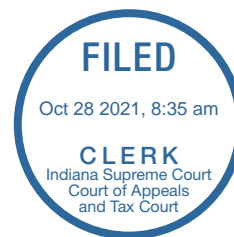


MEMORANDUM DECISION

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 the Matter of the Termination
of the Parent–Child Relationship
of J.I. (Minor Child)

and

C.I. (Mother),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

October 28, 2021

Court of Appeals Case No.
21A-JT-1052

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

Trial Court Cause No.
18C02-2008-JT-56

Bradford, Chief Judge.

Case Summary

[1] C.I. (“Mother”) is the biological mother of J.I. (“Child”).¹ The Department of Child Services (“DCS”) became involved with Mother and Child on March 29, 2019. DCS filed a petition alleging that Child was a child in need of services (“CHINS”) after discovering that Mother, who had an extensive history with DCS, had tested positive for various drugs while being Child’s sole caregiver. Mother subsequently admitted that Child was a CHINS and was ordered to complete certain services. DCS eventually petitioned to terminate Mother’s parental rights to Child after Mother failed to successfully complete the ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Mother contends that DCS failed to present sufficient evidence to support the termination of her parental rights. We affirm.

Facts and Procedural History

[2] Child was born to Mother on November 5, 2015. On March 29, 2019, “DCS received a report alleging abuse and/or neglect.” Ex. Vol. p. 26. The report “alleged that the child’s sibling was born premature, at thirty-four (34) weeks and mother submitted to a drug screen during pregnancy with the child’s

¹ Child’s biological father’s parental rights were terminated by default and he does not participate in this appeal.

sibling, on September 18, 2018, revealing positive results for benzodiazepine, methamphetamine, cocaine, marijuana, oxycodone, hydrocodone, and fentanyl.” Ex. Vol. p. 26. Mother was Child’s primary caregiver at the time of the positive drug screen, admitted to using marijuana previously, admitted to selling methamphetamine and cocaine previously, and had an extensive DCS history including prior CHINS and Informal Adjustment causes. In addition, at birth, Child’s sibling’s “meconium revealed positive results for THC, opiates, and cocaine.” Ex. Vol. p. 26.

[3] On April 24, 2019, DCS filed a verified petition alleging that Child was a CHINS. In this petition, DCS alleged that Child’s physical or mental health was seriously endangered due to Mother’s actions and Child “needs care, treatment, or rehabilitation that the child is not receiving and is unlikely to be provided or accepted without the coercive intervention of the Court.” Ex. Vol. p. 25. Mother admitted that Child was a CHINS on May 1, 2019. The case was initially an in-home CHINS, meaning that Child remained in Mother’s home after the CHINS case began.

[4] On May 29, 2019, DCS filed a request to remove Child from Mother’s home, stating that it was in Child’s best interests to be removed from the home environment and “[d]etention is necessary to protect the child and continuation in the home is contrary to the child’s welfare. The parent, guardian or custodian cannot be located. The parent, guardian or custodian is unable or unwilling to take custody of the child.” Ex. Vol. p. 32. That same day, the juvenile court granted DCS’s request, finding “that it is in the best interests of

the child to be removed from the home environment and remaining in the home would be contrary to the welfare of the child because: of the allegations admitted and of an inability, refusal or neglect to provide shelter, care, and/or supervision at the present time.” Ex. Vol. p. 44.

[5] The juvenile court conducted a dispositional hearing on September 16, 2019, at which time it ordered Mother to complete certain services, including:

- contact the family case manager (“FCM”) weekly;
- notify the FCM of any changes in address, household composition, employment, or telephone number within five days of the change;
- notify the FCM of any arrest or criminal charges filed within five days;
- allow the FCM and service providers to make announced or unannounced visits to the home;
- keep all appointments with the FCM and service providers;
- maintain suitable, safe, and stable housing; secure and maintain a legal source of income;
- ensure that Child was properly clothed, fed, and supervised;
- refrain from using, consuming, manufacturing, or selling any illegal controlled substances;
- complete a substance abuse assessment and complete all recommended treatments;
- submit to random drug screens; complete a psychological evaluation and complete all recommended treatments;
- attend all scheduled visits with Child and comply with all visitation rules and procedures; and
- engage in home-based casework.

In or about October of 2019, Mike Kinnett was appointed as the Court Appointed Special Advocate (“CASA”) to represent Child’s interests in the proceedings.

[6] Despite attempts by DCS and service providers to ensure Mother’s participation and successful completion of the ordered services, Mother failed to successfully

complete the ordered services. On August 10, 2020, DCS filed a petition to terminate Mother's parental rights to Child. The juvenile court held an evidentiary hearing on DCS's petition on February 3, 2021. During the evidentiary hearing, DCS presented evidence outlining Mother's failure to make significant progress towards providing Child with a safe and stable living environment. Following the conclusion of the evidence, the juvenile court took the matter under advisement. On May 4, 2021, the juvenile court entered its order terminating Mother's parental rights to Child.

Discussion and Decision

- [7] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[8] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court’s decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

[9] In deference to the juvenile court’s unique position to assess the evidence, we set aside the juvenile court’s findings and judgment terminating a parent–child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[10] In challenging the juvenile court’s order, Mother contends that the evidence is insufficient to sustain the termination of her parental rights to Child. In order to support the termination of Mother’s parental rights to Child, DCS was required to prove the following:

- (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). Mother argues that the evidence is insufficient to prove subsections (B) and (C). We will therefore limit our review to these same two subsections.

A. Indiana Code Section 31-35-2-4(b)(2)(B)

[11] Mother asserts that “[t]here was no evidence presented that the well-being of the child was threatened by the continuation of the parent-child relationship” and “[t]here was no showing that the [child] had previously on two occasions been adjudicated a [CHINS].” Appellant’s Br. p. 12. However, it is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court’s determination, it is not necessary for DCS to prove, or for

the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

[12] In this case, the juvenile court made numerous findings about the conditions resulting in removal and the likelihood that said conditions would be remedied. The juvenile court found that the conditions in Mother's home at the time of Child's removal on May 28, 2019, included "feces on the floor, the home was cluttered, there was little to no food, there was mold [o]n items in the refrigerator and the shower was not working." Appellant's App. Vol. II p. 111. In addition, although Mother initially attempted to hide from FCM Alexis Jones, when she did finally talk to FCM Jones, Mother appeared to be under the influence, displaying erratic speech, an inability to maintain eye contact, and dilated pupils.

[13] The juvenile court further found:

16. On December 16, 2019, the Court in the CHINS proceeding held its first periodic case review hearing and found that Mother had partially complied with the child's case plan. The Court found "Mother continues to use illicit substances. Mother has not fully participated in substance abuse services. Mother is working to provide DCS and this Court with proof of services such as substance abuse services and mental health services such as a psychological evaluation. Mother has not consistently participated in supervised visitation with the child. Mother has recently become more compliant with homebased casework. Mother has not secured employment. Mother has failed to maintain communication with service providers for visitation with the child. Mother has not maintained participation in supervised visitation with the child. Mother

continues to use illicit substances. Mother is unemployed. Mother has just recently become consistent in participating in homebased casework. Mother has attended sporadic visitation with the child. Mother has not fully cooperated with DCS or court ordered services. Mother cooperates on occasion but is not consistent.”

17. On May 18, 2020, the Court in the CHINS proceeding held its first permanency hearing and found that Mother had not complied with [Child’s] case plan. The Court found “During the current review period, Mother has not consistently submitted to random drug screens. Mother submitted to one screen on 02/21/2020. The screen was positive for Amphetamine and Methamphetamine. FCM regularly texts Mother regarding drug screens. Mother has responded that she will not screen for FCM because she does not trust that FCM will not tamper with the screens and cause them to show a positive result. A current referral for Redwood screens 3x weekly is open for screens. During the current review period, Mother has not engaged in [homebased case work] consistently. Mother did not meet with her case manager after 02/21/2020. A [meeting] was scheduled for the family and Mother did not attend. Providers met with DCS, and [homebased case work] decided to no longer conduct casework sessions in the home of Mother due to current outstanding criminal warrants and the pending allegations in her criminal matters. [Homebased case work] sessions continue to be offered at the providers office. On 03/18/2020, Mother was contacted by [a service provider] to schedule a psychological evaluation. Mother refused to schedule the service with the [service provider].”

38. On June 25, 2019, DCS filed a Verified Emergency Motion to Modify Mother’s Visitation. Mother submitted to a drug screen revealing positive results for methamphetamine and THC and mother left the hospital against medical advice....

Mother also had positive drug screens through the department on 4/22/19, 4/25/19, 5/9/19, 5/15/19, 5/17/19, 5/29/19, 5/30/19, and 6/10/19, and mother was not voluntarily participating in any services regarding use and/or exposure to illicit substances. FCM Jones has been unable to verify the child's whereabouts just prior to the hearing, and the child was participating in unsupervised visitation with mother.

42. Mother completed her substance abuse assessment with Centerstone. However, mother was not forthcoming, so the recommendations were inaccurate. The Court ordered that mother complete another substance use assessment with a different provider.

43. Mother's psychological evaluation was scheduled on three occasions ... but she never completed it. Mother refused to complete the psychological evaluation because she stated DCS and [service providers] were conspiring against her.

44. Mother was not consistent with submitting to random drug screens. FCM [Kasey] Thomas attempted to get screens from mother but she did not cooperate....

46. On October 23, 2019, FCM Thomas discussed [an] order to change placement with mother.

47. After meeting with FCM Thomas, Mother went to the child's daycare and took the child without permission and without notifying DCS or placement....

49. Authorities located the child at mother's home and the child was returned to DCS care.

50. Mother visited with the child on a consistent basis until May 18, 2020.

51. Kathleen Schwer, from Advanced Behavior Consulting, provided supervised visits with the mother and child between November 22, 2019 and December 2019....

53. Mother did not provide appropriate parenting during the visits. She permitted the child to attempt to fry food, the child had access to knives, the child played in water with an electric cord over the water, mother was under the influence during visits which was demonstrated by Mother being agitated, making weird noises and speaking in rants that did not make sense.

56. During the last visit Kathleen was sitting next to the front door. Mother took the child into her room and [maternal] grandmother was sitting in the doorway so the child couldn't get out. When the child finally left the room he had a pop bottle in his hand. Kathleen observed the pop bottle to have a hole burned into the side of it and residue on the bottom.

57. Mother was in her room and started talking to herself. Kathleen did not feel safe and felt threatened, so she reached out to the FCM and her supervisor in an attempt to get police help. Kathleen was finally able to leave the home with the child....

59. Tim Blanchard, Seeds of Life, took over the supervised visits in January 2020....

61. Visits continued to be inappropriate and problematic. Mother was passive with the child. When Mother wasn't passive, she was disruptive and non-compliant. There were times mother would talk about inappropriate topics in the child's presence. Mother attended three-fourths of the visits offered to her. Mother was often late for the visits. Tim and [Child] would have to wait in the car for 15–20 minutes before Mother appeared.

62. The first major disruption that occurred during a visit was at McDonalds. Mother used counterfeit money to buy the food. The manager at McDonalds called the police.

63. The second major disruption occurred at CVS. Mother wanted the visit supervisor to take her to CVS on the way home. [Child was] in the car. Mother came out of CVS and an employee came out behind her and accused her of shoplifting. The CVS employee was taking pictures of Tim's car and license plate. Tim had to be interviewed by police due to that incident.

64. The third major disruption occurred after Tim picked mother up for the visit. [Child was] also in the car for this. Tim was pulled over, his car surrounded by eight police cars, mother was pulled out of the car, handcuffed and taken to jail.

65. The fourth major disruption occurred at a house Mother wanted Tim to stop at. Tim waited in the car with [Child]. Mom came running out of the home with a guy chasing her....

67. On May 18, 2020, the Court ordered that Mother's visits were to occur in a secure setting at the Youth Opportunity Center or the Department of Child Services office.

68. Mother stopped participating in visits after the Court ordered change in location to DCS/YOC.

69. Mother was arrested in June 2020. Mother submitted to a drug screen on June 15, 2020, which returned results positive for amphetamine, methamphetamine, and THC.

70. At the time of th[e] termination hearing mother had not completed her second substance abuse assessment, home-based case work, psychological evaluation, visitation or consistent drug screens.

71. At the time of the termination hearing Mother is still not able to care for the child. Mother has several pending criminal charges including escape (2 counts), resisting law enforcement (2 counts), driving while suspended, kidnapping, robbery resulting in bodily injury, counterfeiting (3 counts), theft (5 counts), and contributing to the delinquency of a minor.

Appellant's App. Vol. II pp. 110, 111–14. Based on these findings, the juvenile court concluded that there is a reasonable probability that the conditions leading to Child's removal from Mother's care would not be remedied.

[14] We note that Mother does not specifically challenge any of these findings on appeal, so they “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). Thus, while Mother may have been “partially compliant with the case plan,” Appellant's Br. p. 12, the evidence clearly demonstrates that she did not remedy the conditions that led to Child's removal from her care. Mother had failed to refrain from consuming illegal substances and was unable to provide Child with a safe and stable home because she was incarcerated pending numerous criminal proceedings. Given Mother's failure to remedy the conditions, we conclude that the evidence is sufficient to support the juvenile court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from Mother's care would not be remedied. Mother's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

B. Indiana Code Section 31-35-2-4(b)(2)(C)

[15] We are mindful that in considering whether termination of parental rights is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* “A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do the same supports a finding that termination of parental rights is in the best interests of the children.” *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007). Furthermore, this court has previously determined that the testimony of the case worker, GAL, or a CASA regarding the children’s best interests supports a finding that termination is in the children’s best interests. *Id.* at 374; *see also Matter of M.B.*, 666 N.E.2d 73, 79 (Ind. Ct. App. 1996), *trans. denied*.

[16] With regard to Child’s best interests, the juvenile court found as follows:

74. The [CASA] agrees that it is in the best interest of the child that the parental rights of [Mother] be terminated and that [Child] be placed for adoption due to mother’s drug use, lack of participating in services and current incarceration.

75. The child needs a safe, stable, secure and permanent environment in order to thrive.

76. [Child] is entitled to permanency and his needs are paramount.

Appellant's App. Vol. II p. 114. Based on these findings, the juvenile court concluded that termination of Mother's parental rights was in Child's best interests.

[17] Mother claims that the evidence does not support the juvenile court's determination that termination of her parental rights is in Child's best interests. We disagree. As the juvenile court found, CASA Kinnett opined that termination of Mother's parental rights was in Child's best interests. When asked why he believed this to be the case, CASA Kinnett explained:

I have seen [Child] for about fourteen (14), fifteen (15) months and I have seen him progress in a very positive manner. The one issue that I see with him is anytime he has contact with his mom he suffers from trauma. And when I say "trauma," what I mean is [after] the visits he becomes emotional. He becomes withdrawn. And one of the biggest problems that I see is I know [Mother] is genuine in her statements she makes towards her kids. But she never follows through with those comments. She makes promises to the children that they depend on and then those promises are never kept. And I see these repeatedly and I have for some time. And I just feel like, again it's tough for me to say when I speak again [sic] parents, but I see [Mother's] first concern is her drug habits and [Child is] on down the list. And it's very unfortunate. I feel like [Child] has made tremendous strides. He is learning to write. He's learning to spell. He's very attentive toward those things. He's a very caring young man. I know that his present placement loves him very much. They take excellent care of him. And the few times that I've heard conversations and the one (1) visit that I witnessed there was a lack of affection and closeness. And that's something I really look for with parents and children. That interaction of emotions and emotional feelings they have toward each other is really important. And so I just feel like [Child] needs to move on. He

needs the trauma to end. He needs the broken promises to stop. He needs to move on with his life. I believe he will be a very successful young man one day if he stays where he is.

Tr. Vol. II pp. 75–76. Given CASA Kinnett’s testimony coupled with Mother’s ongoing inability to provide Child with a safe and stable home, we conclude that the juvenile court’s determination that termination of Mother’s parental rights is in Child’s best interests is supported by sufficient evidence. *See Lang*, 861 N.E.2d at 373 (providing that the testimony of the case worker, GAL, or a CASA regarding the children’s best interests supports a finding that termination is in the children’s best interests). Mother’s claim to the contrary again amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[18] The judgment of the juvenile court is affirmed.

Robb, J., and Altice, J., concur.