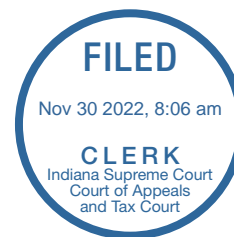


MEMORANDUM DECISION

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
C.M., B.K., and V.K. (Minor
Children);

A.A. (Mother),

Appellant-Defendant

v.

The Indiana Department of
Child Services,

Appellee-Plaintiff.

November 30, 2022

Court of Appeals Case No.
22A-JT-235

Appeal from the Vermillion Circuit
Court

The Honorable Jill Wesch, Judge

Trial Court Cause Nos.

83C01-1912-JT-19

83C01-1912-JT-20

83C01-1912-JT-21

Pyle, Judge.

Statement of the Case

[1] A.A. (“Mother”) appeals the termination of the parent-child relationships with her children, C.M. (“C.M.”), B.K. (“B.K.”), and V.K. (“V.K.”) (collectively “the children”), claiming that the Department of Child Services (“DCS”) failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in the children’s removal or the reasons for placement outside Mother’s home will not be remedied; (2) a continuation of the parent-child relationship poses a threat to the children’s well-being; and (3) termination of the parent-child relationship is in the children’s best interests. Concluding that there is sufficient evidence to support the trial court’s decision to terminate the parent-child relationships, we affirm the trial court’s judgment.¹

[2] We affirm.

Issue

Whether there is sufficient evidence to support the involuntary termination of Mother’s parental rights.

¹ The trial court also terminated the parental rights of C.M.’s father; however, he is not participating in this appeal. J.K. (“Father”), who is the father of B.K. and V.K., voluntarily relinquished his parental rights.

Facts

- [3] The evidence most favorable to the termination reveals that Mother is the parent of son C.M., who was born in February 2004; son B.K., who was born in April 2012; and daughter V.K., who was born in April 2016. In 2018, Mother and Father (collectively “Parents”) were living together with the children.
- [4] In May 2018, DCS received reports alleging that the children had been exposed to domestic violence in the home and that Parents had been using drugs in the presence of the children. After investigating the reports, a DCS family case manager asked Mother to submit to drug screens, which were positive for methamphetamine and amphetamine.
- [5] In July 2018, DCS filed petitions alleging that the children were in need of services (“CHINS”). The children remained in the home until August 2018, when then-six-year-old B.K. and then-two-year-old V.K. both tested positive for methamphetamine and amphetamine. At that time, C.M., B.K., and V.K. were all removed from Mother’s home.
- [6] Two months later, in September 2018, the trial court adjudicated the children to be CHINS. In a November 2018 dispositional order, the trial court ordered Mother to: (1) abstain from the use of illegal controlled substances; (2) complete a substance abuse assessment and follow all of the assessor’s recommendations; (3) complete a domestic violence assessment and follow all

of the assessor's recommendations; (4) submit to random drug screens; and (5) attend supervised visits with the children.

[7] The trial court's February 2019 order on periodic case review revealed that Mother had continued to test positive for methamphetamine and amphetamine and the domestic violence incidents between Parents had continued. Mother had engaged in supervised visits with the children; however, DCS had concerns about Mother's aggressive behavior during the visits.

[8] Four months later, the trial court's June 2019 order on periodic case review revealed that Mother had completed a ninety-day drug treatment program at Club Soda. However, she had continued to test positive for methamphetamine and amphetamine. Mother had also continued to engage in supervised visits with the children. However, several of the visits had ended early because Mother had become aggressive with both the DCS family case manager who was supervising the visits and the children.

[9] For the next few months, none of Mother's drug screens were positive for methamphetamine or amphetamine. In September 2019, based upon Mother's compliance with the dispositional order and progress in the case, the trial court granted DCS' request for a trial home visit for B.K. and V.K. However, the trial home visit ended a month later, in October 2019, when Mother stabbed Father in the face with a knife in the presence of B.K. and V.K., and a cousin living in the home slapped and knocked down V.K.

- [10] Also in October 2019, B.K. and V.K. began counseling with Therapist Jennifer Roach (“Therapist Roach”). Therapist Roach diagnosed V.K. with a trauma-related disorder. According to Therapist Roach, V.K. had engaged in violent play during therapy. Specifically, Therapist Roach explained that after V.K. had built a house out of blocks, Therapist Roach had asked her what the people who lived in the house did. V.K. had replied, “[t]hey hit[]” and knocked down the blocks. (Tr. Vol. 3 at 41).
- [11] In addition, Therapist Roach diagnosed B.K., who was angry and violent, with post-traumatic stress disorder “related to long-term early neglect.” (Tr. Vol. 3 at 44). B.K. had previously put holes in the walls at his former foster family’s house, intentionally broken his bed, and hurt the family’s pet. B.K. was subsequently diagnosed in an in-patient treatment facility with reactive attachment disorder, which Therapist Roach described as a “very serious diagnosis” that “takes a team of people and the right and nurturing environment to help him learn to self-regulate.” (Tr. Vol. 3 at 45).
- [12] In December 2019, after Mother had continued to test positive for methamphetamine and amphetamine and had failed to comply with the CHINS dispositional order, DCS filed a petition to terminate Mother’s parental relationships with C.M., B.K., and V.K. In January 2020, DCS filed a motion to terminate services, including visitation. According to DCS, Mother had not been engaging in services or submitting to random drug screens. In addition, the children’s therapist had recommended ending visits because they were detrimental to the children’s mental health. Further, Mother had tested positive

for methamphetamine and amphetamine following a January 2020 visit, and she and Father had continued to be aggressive to the DCS family case manager during the visits. For example, Parents stated, in the presence of the children, that the case managers got a car every time they removed a child from his or her parents. Parents further stated that case managers sold children “to people who want[ed] the blonde-haired and blue-eyed kids[.]” (Tr. Vol. 2 at 153). The trial court granted DCS’ motion to terminate visitation until the therapist recommended reinstating it. However, the trial court denied DCS’ motion as it related to the provision of services to Mother.

[13] The trial court heard the facts as set forth above at a two-day termination hearing in November and December 2020. In addition, DCS Family Case Manager Robin Gossett-Fisher (“FCM Gossett-Fisher”) testified that although Mother had participated in a drug assessment in June 2020, Mother had failed to follow the assessor’s recommendations. Rather, Mother had continued to use methamphetamine. According to FCM Gossett-Fisher, Mother’s most recent methamphetamine-positive drug screen had been just two weeks before the termination hearing. Further, although Mother had completed an online domestic violence treatment program, Mother had been involved in another domestic violence incident with Father just two months before the termination hearing. In addition, according to FCM Gossett-Fisher, Mother had been participating in home-based therapy for the previous year; however, Mother had not successfully completed therapy because she had continued to engage in domestic violence and use illegal substances. When asked if the conditions that

had resulted in the children's removal would be remedied, FCM responded that they would not because Mother had continued to engage in domestic violence incidents and use methamphetamine during the two-and-one-half-year-pendency of the CHINS proceedings. FCM Gossett-Fisher further testified that V.K. was in a pre-adoptive home and had made significant progress. Although B.K. continued to struggle with his behavior, the eventual plan for him was also adoption. The plan for C.M. was a guardianship with the family with whom he was currently placed.

[14] In addition, Therapist Roach testified that it was not in the children's best interests to be placed in Mother's care because Mother had continued to use methamphetamine and engage in domestic violence incidents. Further, CASA Kerri Wheeler ("CASA Wheeler") testified that termination was in the children's best interests.

[15] Then-sixteen-year-old C.M. testified that he did not want to return to Mother's home and that he would have concerns for B.K. and V.K. if they had to return there. According to C.M., Mother had "had plenty of time to show whether or not [she] c[ould] clean up [her] act and do what [she was] supposed to do. It [had] been almost two and a half years . . . [a]nd there [had] been no change at all." (Tr. Vol. 3 at 72). C.M. testified that he wanted his current caretakers to be appointed as his guardians.

[16] Lastly, Mother testified that she believed that FCM Gossett-Fisher had "had a vendetta against [her] since day one." (Tr. Vol. 3 at 94). In addition, Mother

identified herself as a “casual user of methamphetamine[]” and believed that B.K. had never “had what you would call a severe problem on anything other than just being an ornery kid.” (Tr. Vol. 3 at 97, 86).

[17] In April 2021, the trial court issued detailed twenty-three-page orders terminating Mother’s parental relationships with C.M., B.K., and V.K. Mother now appeals the terminations.

Decision

[18] Mother argues that there is insufficient evidence to support the termination of her parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[19] When reviewing the termination of parental rights, we will not weigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court’s findings or judgment

unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship 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. *Id.* at 1229-30.

[20] A petition to terminate parental rights must allege:

(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.

[21] Here, Mother argues that there is insufficient evidence to support the termination of her parental rights. Specifically, she contends that the evidence is insufficient to show that there is a reasonable probability that: (1) the

conditions that resulted in the children's removal or the reasons for placement outside Mother's home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to the children's well-being.

[22] At the outset, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside Mother's home will not be remedied.

[23] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior 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. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct.

App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of her future behavior. *E.M.*, 4 N.E.3d at 643.

[24] Here, the children were removed because of domestic violence in the home and Mother's drug use. Our review of the evidence reveals that Mother continued to engage in domestic violence incidents during the pendency of the CHINS proceedings. Indeed, Mother stabbed Father in the face with a knife in the presence of B.K. and V.K. during their trial home visit. In addition, Mother had engaged in a domestic violence incident just two months before the termination hearing. Further, Mother had also continued to use methamphetamine during the pendency of the CHINS proceedings. Mother's most recent use of methamphetamine was just two weeks before the termination hearing. In addition, Mother had not successfully completed any of the services that DCS had recommended. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that had resulted in the children's removal would not be remedied. We find no error.

[25] Mother also argues that there is insufficient evidence that the termination was in the children's best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the

totality of the evidence. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. Further, the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[26] Here, our review of the evidence reveals that B.K. suffers from reactive attachment disorder, which Therapist Roach explained is a very serious diagnosis that requires a team of people and a nurturing environment to treat. Yet Mother believes that B.K. is merely an ornery child. In addition, CASA Wheeler testified that termination was in the children's best interests and Therapist Roach testified that it was not in the best interests of the children to be placed in Mother's care. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the children's best interests. As a result, there is sufficient evidence to support the terminations.

[27] Affirmed.

Robb, J., and Weissmann, J., concur.