

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

C.N.W. (Minor Child),

and

C.W. (Mother)

Appellants-Respondents,

v.

Indiana Department of Child
Services

Appellee-Petitioner.

December 27, 2022

Court of Appeals Case No.
22A-JT-1256

Appeal from the Scott Superior
Court

The Honorable Vicki L.
Carmichael, Special Judge

Trial Court Cause No.
79D01-2109-JT-46

Bailey, Judge.

Case Summary

- [1] C.W. (“Mother”) appeals the trial court’s order terminating her parental rights over her minor child, C.N.W. (“Child”).¹ Mother raises one issue for our review, namely, whether the court clearly erred when it terminated her parental rights. We affirm.

Facts and Procedural History

- [2] Mother has another child, M.G., who was removed from Mother’s care in 2016 by the Indiana Department of Child Services (“DCS”) after the child was found walking along a road unsupervised. At the time M.G. was removed from Mother’s care, law enforcement officers noted that Mother’s mental health was “deteriorating” and that she was “delusional.” Ex. Vol. 3 at 35. DCS filed a petition alleging that M.G. was a Child in Need of Services (“CHINS”). DCS then offered Mother services, including mental health services, as part of those CHINS proceedings. In August 2016, Dr. Linda McIntire conducted a psychological assessment of Mother. At the time of the assessment, Mother was actively “psychotic” and making “delusional” statements. Tr. Vol. 2 at 79. Dr. McIntire saw evidence of “on-going psychosis” and determined that Mother suffers from “paranoid schizophrenia[.]” *Id.* at 80-81. Dr. McIntire

¹ Child’s father is unknown, and the court terminated the parental rights of the unknown father in a separate proceeding.

recommended that Mother “be medicated” and undergo “intensive therapy[.]” *Id.* at 86-87. But Mother did not seek treatment for her mental illness.

- [3] Prior to the birth of Child, Mother’s mental health was unstable. Despite her doctor’s recommendation that Mother undergo a C-section, Mother insisted that she would give birth at home by herself. In addition, Mother’s doctor had “concerns” regarding Mother’s mental health because it was believed that she was “expressing psychosis.” *Id.* at 108. As a result, Mother’s doctor obtained a court order for Mother to be held in a hospital for 72 hours.
- [4] While at the hospital, on June 9, 2018, Mother gave birth to Child. On June 10, DCS received a report that Child was the victim of neglect. DCS Family Case Manager (“FCM”) Melissa Buie investigated the report. During her investigation, FCM Buie learned about the ongoing CHINS case regarding M.G., that Mother had been diagnosed with a mental health disorder, and that Mother had been the subject of the 72-hour hold.
- [5] FCM Buie met with Mother while Mother was still on hold at the hospital. Mother denied the existence of the CHINS case involving M.G. And Mother indicated that “she would not be completing services through the case[.]” *Id.* at 111. As a result of her investigation, and based on Mother’s “severe mental illness,” FCM Buie determined that it would not be safe for Child to return to Mother’s care. Ex. Vol. 3 at 36. DCS removed Child from Mother’s care and, on June 13, filed a petition alleging that Child is a CHINS.

- [6] Following a fact-finding hearing on DCS’s petition, the court determined that “Mother suffers from severe, untreated mental health issues,” which makes her unable to provide Child with the care he needs. *Id.* at 43. As a result, the court adjudicated Child a CHINS. The court then entered a dispositional order in which it ordered Mother to participate in services. In relevant part, the court ordered Mother to “[c]omplete a psychological evaluation(s) as referred” and “successfully complete any recommendations that result from the evaluation(s).” *Id.* at 47.
- [7] FCM Shelley Campbell put therapeutic services in place for Mother to address her mental health issues, including offering Mother “[i]n-patient treatment.” Tr. Vol. 2 at 129. However, Mother “did not accept the treatment that was recommended,” in order to “get her mental health stable.” *Id.* at 122. In addition, Mother “refused” to take any medication for her “on-going mental health needs.” *Id.* at 123. FCM Campbell also offered home-based therapy, but Mother did not meet with that provider.
- [8] At the beginning of the CHINS proceedings, Mother visited with Child weekly. But in December 2018, Mother was arrested and charged with battery, invasion of privacy, and escape. Mother was initially found incompetent to stand trial on those charges, and the trial court ordered that she be admitted to Logansport Hospital for treatment. While there, Mother was prescribed medication to address her mental health needs. Mother responded well to the medication, and, in July 2019, a doctor found her competent to stand trial. Shortly

thereafter, Mother entered into a plea agreement with the State and agreed to plead guilty to the battery charge.

[9] Mother was released from incarceration in November 2019. After that time, she did not visit with Child again. In addition, Mother stopped taking her medication, and her mental health deteriorated. FCM Brandice Sutton placed a referral for Mother to participate in a medication management evaluation and to submit to a “psych eval.” *Id.* at 140. But Mother did not “meaningfully” engage in mental health therapy. *Id.* at 149. On December 2, the court terminated Mother’s parental rights as to M.G. *See Ex. Vol. 3* at 85.

[10] FCM Emily Spellman was briefly involved with Mother’s case. During that time, Mother was “not participating” in services, so the services “were ordered to stop.” *Tr. Vol. 2* at 165. And FCM Spellman had “alarming” conversations with Mother. *Id.* During one such conversation, Mother stated that her doctor had sent all of her children to China for three years but that they were now back home. At some point, FCM Spellman learned that Mother was expecting another child.

[11] FCM Rebecca Moody was involved in Mother’s case from February 2020 through April 2021 and again from August through October 2021. FCM Moody referred Mother to therapy and medication management. Mother initially attended therapy, but Mother denied having any “psychological diagnosis” to the therapist. *Id.* at 186. FCM Moody informed the therapist of Mother’s diagnosis, and Mother had “a couple of sessions” with the therapist.

Id. At one point, the therapist asked Mother to drug screen to ensure that Mother was taking her medication. The drug screen revealed that Mother was not taking her medication. Mother told the therapist that “she was fine” and that she did not need therapy, and Mother stopped attending. *Id.*

[12] During FCM Moody’s involvement, Mother would have long phone conversations with FCM moody during which she would “jump from one topic to another or just continue to say the same things over and over.” *Id.* at 190. FCM Moody felt that Mother’s mental health “was getting worse.” *Id.* At the time FCM Moody ended her role as Mother’s case manager, she did not believe that Mother “was in a position that she could have safely cared for” Child. *Id.* at 191.

[13] On September 17, 2021, DCS filed a petition to terminate Mother’s parental rights. On October 14, FCM Brittany Wright took over as Mother’s case manager. At that time, Mother was not in compliance with the recommendations regarding her mental health treatment. Mother still did not believe “that she has any mental health concerns,” so she was not receiving any services. *Id.* at 197.

[14] The court held a three-day evidentiary hearing on DCS’s petition. During the hearing, Mother testified that she works as an operations manager at Papa Johns, that she sends necessary items to Child, and that she provides Child with health insurance. She also asserted that she has “complied with everything [she] could have possibly tried.” *Id.* at 46. Mother also maintained that, while

she had submitted to prior psychological assessments, none of them resulted in a diagnosis. And she testified that she did not believe that she had any “mental problem” that “would prevent [her] from caring for [her] children in any way.” *Id.* at 50.

[15] Dr. McIntire also testified during the hearing. She testified that it would be “improbable” for Mother’s diagnosis to “remit on its own without any sort of intervention or treatment.” *Id.* at 86. And she testified that, had Mother stayed on her medication, some of her symptoms “could have been remitted” such that she could “function much better[.]” *Id.* at 88. And she testified that, while she was not aware of Child or “anything about the current case,” a person who is psychotic “cannot safely parent” a child. *Id.* at 92.

[16] DCS presented the testimony of Ashlea Dodsworth, a social worker with the Kentucky Cabinet of Family Services. Dodsworth testified that Mother had given birth to another child, A.W., while in Kentucky. Dodsworth also testified that she had received a report that A.W. had been the victim of neglect and that Mother had “untreated mental health concerns.” *Id.* at 205. Dodsworth testified that her department had removed A.W. from Mother’s care and ordered Mother to participate in services but that Mother “had not been cooperative.” *Id.* at 209. Dodsworth then testified that her department had filed a petition to terminate Mother’s parental rights over A.W. based on the belief that Mother cannot safely parent A.W. She further testified that Mother “continues to deny that she’s ever had any type of mental health issues” and “continues to refuse” to engage in “mental health treatment.” *Id.* at 214.

[17] Wright testified that Child’s foster home was a good placement and that the termination of Mother’s parental rights was in Child’s best interests. Similarly, Child’s Court Appointed Special Advocation (“CASA”) testified that the termination of Mother’s parental rights would be in Child’s best interest. And the CASA testified that Mother is “not capable” of caring for Child. *Id.* 231.

[18] On April 29, 2022, the trial court entered extensive findings of fact and conclusions thereon. In relevant part, the court found that “Mother’s ongoing and unaddressed mental health [issue] continues to negatively impact her ability to care for any child, including” Child. Appellant’s App. Vol. 2 at 146. The court then concluded that there is a reasonable probability that the conditions that resulted in Child’s removal or the reasons for placement outside of Mother’s home will not be remedied, that the continuation of the parent-child relationship poses a threat to Child’s well-being, that termination of the parent-child relationship is in Child’s best interest, and that there is a satisfactory plan for the care and treatment of Child. As such, the court terminated Mother’s parental rights over Child. This appeal ensued.

Discussion and Decision

[19] Mother challenges the trial court’s termination of parental rights over Child. We begin our review of this issue by acknowledging that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans.*

denied. 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. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* 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.

[20] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, 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. . . .

(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) (2022). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dept of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[21] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, 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. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[22] Here, in terminating Mother’s parental rights, the trial court entered extensive findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “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). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[23] On appeal, Mother does not challenge any of the factual findings made by the trial court. Nor does Mother challenge the court's conclusion that the continuation of the parent-child relationship poses a threat to Child. Further, Mother concedes that "there is sufficient evidence in the record to support the trial court's determination that the reasons for removal are not likely to be remedied" and that "there is sufficient evidence that 'there is a satisfactory plan for the care and treatment of the child.'" Appellant's Br. at 15. Rather, Mother only challenges the court's conclusion that the termination of the parent-child relationship is in Child's best interest.

[24] In determining what is in a child's best interests, a court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[25] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not

be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

[26] The entirety of Mother's argument on appeal is as follows:

Allowing services to continue for Mother would not substantially change the current circumstances of the Child's life. Termination of the parent-child relationship would remove all services from Mother at a time when she, according to the DCS evidence, was in desperate need of intensive services for mental health. There was no evidence or argument that Mother was at fault for her mental health diagnosis. Nor was there any evidence that Mother had intentionally or actively endangered the Child in any manner whatsoever. Rather, the undisputed evidence was that, although Mother lacked any insight into her alleged mental health condition, she maintained a steady job and a stable home. She continuously made substantial efforts to provide for the Child's best interests by send[ing] clothes, food, toys, and providing health insurance. Mother's lack of relationship with the Child was solely the result of the DCS and trial court denying her any visitation. There was no evidence that Mother ever abandoned her relationship with the Child or failed to take opportunities to visit the Child. Termination does not serve the best interests of the children [sic].

Appellant's Brief at 17.

[27] Mother's argument misses the mark. Mother focuses on her interests, not those of Child. Indeed, the crux of Mother's argument is that she would lose access to services if the relationship were terminated. But the question is not whether the termination is in Mother's best interests but whether it is in Child's. Other than a brief statement that continuing the parent-child relationship would not

alter Child's current circumstances, Mother makes no argument to explain why termination of her rights is not in Child's best interest.

[28] Further, there is no evidence that, even if Mother were to have continued access to services, she would take advantage of those services. On the contrary, despite Mother's known history of mental illness—having received a diagnosis of paranoid schizophrenia as early as 2016, Mother consistently denies the existence of any such diagnosis and refuses to take medication to treat her illness. And even though mental health services were offered to Mother multiple times—by DCS throughout the CHINS proceedings involving both M.G. and Child and by Kentucky after the birth of A.W., Mother either did not avail herself of the treatment or did not meaningfully participate.

[29] Child needs permanency. At the time of the termination hearing, Child had been removed from Mother's care for over three years. FCM Wright testified that Child's foster home was a good placement and that termination of Mother's parental rights was in Child's best interests. Similarly, Child's CASA testified that termination of Mother's parental rights would be in Child's best interest. Mother's historic refusal to seek treatment for a mental health illness that interferes with her ability to care for Child, coupled with the testimony from FCM Wright and the CASA, supports the court's determination that termination of her rights is in Child's best interests.

Conclusion

[30] Our review leads us to conclude that the termination of Mother’s parental rights over Child was in Child’s best interests. We therefore hold that the trial court did not err when it terminated Mother’s rights. We affirm the trial court.

[31] Affirmed.

Riley, J., and Vaidik, J., concur.