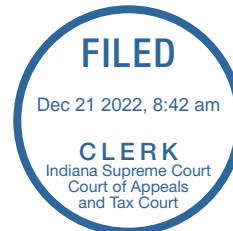


MEMORANDUM DECISION

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 Involuntary Termination
of the Parent-Child Relationship
of:

C.R. (Minor Child) and
A.C. (Mother) and E.R.
(Father),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

December 21, 2022

Court of Appeals Case No.
22A-JT-1604

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause No.
72D01-2201-JT-4

Altice, Judge.

Case Summary

- [1] In this consolidated appeal, A.C. (Mother) and E.R. (Father) (collectively, Parents) appeal the involuntary termination of their parental rights to C.R. (Child). Parents argue that the juvenile court's determination that termination was in the best interests of Child is not supported by sufficient evidence.
- [2] We affirm.

Facts & Procedural History

- [3] Child was born on February 27, 2019. In early March, the Indiana Department of Child Services (DCS) received a report that Child was born drug exposed. During the DCS assessment, Mother and Father both tested positive for methamphetamine. DCS initiated an informal adjustment, which was unsuccessful and ultimately closed because DCS could not locate Parents.
- [4] On August 14, 2019, DCS received a report that Child was being neglected. Specifically, it was reported that Parents' apartment was dirty and cluttered, that there were frequent guests coming in and out of the apartment at all hours, and that there were odors emanating from the apartment. Family Case Manager (FCM) Kristina Palmer investigated the report. She found that the house was clean and not cluttered but that Child was left in the care of an inappropriate caregiver. Mother and Father admitted to using drugs and both

tested positive for illegal substances. Child was removed from the home and placed with the paternal grandparents.

[5] On August 16, 2019, DCS filed a child in need of services (CHINS) petition. Child was adjudicated a CHINS on October 22, 2019.¹ The court held a dispositional hearing on November 21, 2019. The court ordered Parents to maintain contact with their FCM, keep all appointments with service providers, submit to random drug screens, refrain from use of illegal substances, complete a parenting assessment and follow all recommendations, complete a substance abuse assessment and follow all recommendations, obey the law, and visit Child. DCS completed referrals for all court-ordered services, as well as for individual counseling for Mother.

[6] Over the next several months, Mother was compliant with services and completed a rehabilitation program on January 27, 2020. She was then referred to the Providence House, which is a sober living facility. Father was partially compliant with services and completed a recovery program on March 5, 2020, after which he joined Mother at the Providence House. Although Parents initially tested positive for illegal substances at the beginning of DCS's involvement, after they began drug treatment, they started testing negative. Things were progressing so well for Mother and Father that DCS filed a request for a trial home visit, which was approved by the court on May 12, 2020.

¹ Mother admitted Child was a CHINS. Because Father was incarcerated at the time of the hearing, the court held a fact-finding hearing as to him prior to adjudicating Child a CHINS.

Mother and Father continued to engage in services, including homebased casework, individual therapy, and random drug screens. In October 2020, Parents were still engaged in services and Child remained in their care on a trial home visit. In January 2021, DCS continued its referral for Parents to remain at the Providence House rather than having Parents tackle the very difficult task of finding housing amid the Covid-19 pandemic.

[7] On March 1, 2021, Parents, along with Child, left the Providence House. By the end of the month, Mother and Father had both relapsed. DCS filed a request to terminate the trial home visit, which was initially denied. Subsequently, in July 2021, the court granted the request to terminate the trial home visit because DCS showed that Parents' drug screens were positive for illegal substances. Child was placed in foster care.

[8] A permanency hearing, scheduled for October 7, 2021, was continued at Mother's request as she was trying to find another rehabilitation program. After entering a rehabilitation program on October 18, 2021, Mother checked herself out against medical advice five days later. By that time, Mother had tested positive on nine of eleven drug screens and had automatic positives for an additional five screens.² During the same timeframe, Father tested positive on five of six drug screens and had three other automatic positive results. At the next permanency hearing, the plan for Child was changed to adoption with

² When Mother and Father failed to submit a requested drug screen, DCS entered an automatic positive result.

a concurrent plan of reunification. This was due primarily to the length of the case and the fact that DCS was no closer to returning Child to Parents' care.

[9] Father completed a rehabilitation program in January 2022, and Mother completed a rehabilitation program in February 2022. Thereafter, Parents did not stay in touch with DCS, and they both relapsed again.

[10] When Child was not in their care, Mother regularly visited Child. Father visited Child after he was released from jail.³ The visitation supervisor testified that Parents were prepared for their visits, providing appropriate food, toys, and activities. Other than a few cancellations due to weather, holidays, and calendar conflicts, Parents were generally consistent with their visits with Child.

[11] On January 5, 2022, DCS filed a petition to terminate the parent-child relationships. The court held a fact-finding hearing on May 19, 2022. At the time of the hearing, Father was living with his father but looking for a more stable home. Mother was living in an apartment, although there were eviction proceedings pending. Parents planned to find a new home together if they were unsuccessful in opposing eviction. Mother and Father were using illegal substances. Since February, Mother had tested positive on twelve of thirteen drug screens, and Father tested positive on fourteen of sixteen screens.

³ In July 2021 Father was arrested for possession of methamphetamine and battery.

[12] At the hearing, the FCM and the court appointed special advocate (CASA) each testified that they were of the opinion that termination of Parents' parental rights was in Child's best interests. The CASA further opined that it was in the best interests of Child to be adopted by his foster placement. Child's foster placement expressed a desire to maintain contact with Parents and keep them involved in Child's life in the future. On June 9, 2022, the court issued its written order terminating Parents' parental rights. Mother and Father each filed a notice of appeal on July 8, 2022. This court later granted Parents' request to consolidate their respective appeals.

Discussion & Decision

[13] The Fourteenth Amendment to the United States Constitution protects a parent's right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests[,]’” parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, the parent-child relationship may be terminated when a parent is unable or unwilling to meet parental obligations. *Id.* We are cognizant that involuntary termination of parental rights is the most severe sanction a court can impose because it severs all rights of a parent to his or her child. *Matter of D.G.*, 702 N.E.2d 777, 780-81 (Ind. Ct. App. 1998). Therefore,

termination is considered a last resort, “available only when all other reasonable efforts have failed.” *Id.* at 781.

[14] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re D.D.*, 804 N.E.2d at 265. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[15] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, 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)(B), (C), (D); Ind. Code § 31-37-14-2.

[16] Parents do not challenge the court's determination under (B)(i) and (ii) or that there is a satisfactory plan for the care and treatment of Child. They argue only that the evidence does not support the court's determination that termination is in the best interests of Child. Parents maintain that "termination [will] not serve to improve the Child's life" but, rather, would "severely damage the relationship between loving parents and the Child, causing untold anguish and stress on everyone involved." *Appellants' Brief* at 10. They specifically note that the status quo will remain after termination given the foster placement's express desire to maintain Child's relationship with Mother and Father.

[17] When deciding whether termination of parental rights is in a child's best interests, the trial court must look beyond the factors identified by DCS and consider the totality of the evidence. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, interests of the parents

must be subordinated to those of the children involved. *Id.* Recommendations by case managers, the CASA, and/or service providers to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied.*

[18] Here, Mother and Father both struggle with addiction issues. FCM Smith testified that Parents’ level and frequency of drug use had increased over the course of the case, despite having spent a year in a treatment facility. A few weeks before the termination hearing, Father admitted to the FCM that Child would not be safe with Parents because of their drug use and admitted that their drug use was out of control. Although Parents have had periods of sobriety, they quickly relapsed when not under the close supervision of a rehab facility. The FCM and CASA both recommended termination of Parents’ parental rights and adoption of Child by his foster placement because of Parents’ inability to maintain sobriety. Additionally, in the nearly three years since DCS became involved with Parents, they have not established consistent employment or housing stability. Child needs and deserves stability and consistency that Parents are unable to provide. *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (“Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.”) (internal quotation marks omitted). The trial court’s conclusion that termination of Parents’ parental rights was in Child’s best interests is not clearly erroneous.

Judgment affirmed.

Brown, J. and Tavitas, J., concur.