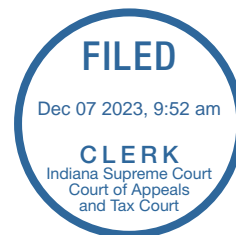


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

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

K.M.R. and K.S.R. (Minor
Children)

and

S.R. (Mother) and D.O. (Father)

Appellants-Respondents,

v.

Indiana Department of Child
Services,

December 7, 2023

Court of Appeals Case No.
23A-JT-1047

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause Nos.
45D06-2204-JT-69, 45D06-2301-
JT-8

Appellee-Petitioner

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] In this consolidated appeal, S.R. (Mother) and D.O. (Father) (collectively, Parents) separately appeal the trial court’s order involuntarily terminating their parental rights. Parents present several issues for our review, which we consolidate and restate as: Did the trial court err in terminating their parental rights?

[2] We affirm.

Facts & Procedural History

[3] Mother has four children, with the youngest two being the subject of this termination action—K.M.R., born July 10, 2016, and K.S.R., born April 25, 2018 (collectively, Children). Father is the biological father of K.M.R. and one

of Mother's older children, K.R. Before us is Father's challenge to the termination of his parental rights to K.M.R.¹

[4] Mother and Father have a prior history with the Lake County Department of Child Services (DCS). In June 2012, Parents were involved in a child in need of services (CHINS) case following an incident where K.R. suffered an injury to his eyes and lips while in Father's custody, which resulted in a hospitalization for trauma. In that case, Father did not visit K.R. regularly, missed visits, and failed to consistently communicate with providers and DCS. The CHINS action was terminated in March 2013 when K.R. was reunified with Mother.

[5] Another CHINS action was opened in November 2013. In this matter, Parents admitted that K.R. was a CHINS due to Mother's substance abuse and Father's incarceration. In July 2016, K.M.R. was born drug positive and a CHINS case was initiated as to her. At that time, K.R. remained a ward of the State under the November 2013 CHINS action. These CHINS actions were closed in December 2017 when Mother's mother (Maternal Grandmother) was granted guardianship of K.M.R. and K.R.

[6] On December 13, 2018, DCS received a report from the East Chicago Police Department about possible neglect. At the time, Mother was living with Maternal Grandmother, who continued to have guardianship of K.M.R. and

¹ L.G. is the alleged father of K.S.R. The trial court also terminated his parental rights. He does not participate in this appeal.

K.R. Maternal Grandmother left Children and K.R. in Mother's care while she ran errands. While Maternal Grandmother was away, Mother consumed pills and then, despite rainy weather, took the Children outside. A passerby contacted the police and reported an abandoned baby. Police officers arrived at the home and learned that K.S.R., who was seven months old, was found alone on the sidewalk, crying, and wearing only a soiled diaper. When police knocked, Mother answered the door naked. Mother was behaving erratically and it was clear to the officers that "she was under the influence of something." *Exhibits Vol. 1* at 53. Mother and Children were transported to the hospital, where Mother was admitted pending a psychiatric evaluation.

[7] Family Case Manager (FCM) Ayanna Ward went to the hospital to investigate the report. FCM Ward noted Children were "filthy" and in soiled diapers. *Id.* at 61. K.M.R.'s diaper was so soiled it was leaking out of the front and back. K.S.R.'s diaper was tied to her body and had to be cut off by hospital staff. Believing Children to be at imminent risk, DCS took them into custody and placed them in foster care, where they have remained.

[8] On December 17, 2018, DCS filed petitions alleging the Children were CHINS based on Mother's drug use, lack of safe supervision, Mother's erratic behavior, and Father's lack of involvement. Parents failed to appear for the initial detention hearing, at which the court found probable cause for Children's removal and placement in foster care. In its provisional order, the court ordered Father to participate in a Fatherhood Engagement program and Mother to engage in various services and supervised visitation.

[9] On January 16, 2019, the court adjudicated Children CHINS as to Mother after she appeared and admitted to the allegations. Father failed to appear. In its dispositional order, the court ordered Mother to participate in a clinical assessment, supervised visitation, home-based casework, a substance-abuse assessment and to follow all assessment recommendations, and to submit to random drug screens. In March 2019, Maternal Grandmother admitted to the allegations in the CHINS petition as to K.M.R. Thereafter, the court ordered her to complete individual therapy, parenting education, and supervised visitation. Initially, the permanency plan for K.M.R. was reunification with Maternal Grandmother.

[10] From June to December 2019, Mother submitted to eight drug screens, refused to submit to one drug screen, and was a no show for twenty drug screens. Of the eight drug screens, Mother consistently tested positive for THC (marijuana) and tested positive on two occasions for opiates, tramadol, and alcohol. By December 2019, Mother reported to DCS that she no longer wanted to participate in services but she “wants to see her children.” *Id.* at 100. Mother expressed her desire that K.S.R. be placed with Maternal Grandmother. Despite Mother’s stated desire to not engage in services, the court approved supervised visits between Children and Mother and Maternal Grandmother to occur in Maternal Grandmother’s home.

[11] During a supervised visit on March 4, 2020, there was a report that the home smelled of marijuana. Mother submitted to a drug screen that came back positive for synthetic marijuana. Maternal Grandmother refused to submit to a

drug screen but admitted that she had taken medications that had not been prescribed to her. The supervised in-home visits were stopped, and subsequent supervised visits were to be held at a third-party facility.

[12] At some point, Mother was diagnosed with bipolar disorder and schizophrenia and offered services but failed to participate. Mother left Indiana at some point in 2020 and failed to notify DCS. All subsequent efforts to engage Mother in reunification services failed.

[13] By March 2020, Father had yet to involve himself in the case. On March 30, DCS filed its first petition to terminate Mother's and Father's parental rights. The next day, DCS moved to dismiss the termination petition, asserting that termination was not in Children's best interests at that time.

[14] In May 2020, DCS informed the court that it had been in touch with Father. Father attended his first court hearing in August 2020. On November 4, Father appeared for a review and permanency hearing. DCS had requested therapeutic, supervised visits on Father's behalf. The court, however, directed that Father first engage in the Real Fatherhood initiative, complete any services deemed necessary, and establish paternity before it would consider the visitation request. *Id.* at 142.

[15] On February 18, 2021, the court adjudicated K.M.R. a CHINS as to Father and entered a dispositional order requiring Father to "participate in Real Fatherhood, have a parenting assessment and an initial clinical assessment" and directing DCS to "status the Court if they request therapeutic visitation between

father and the children.” *Exhibits Vol. 3* at 7. DCS referred Father for court-ordered services. On May 3, 2021, Father started the process of establishing paternity by filing a petition with the court. He, however, failed to appear at the initial hearing on May 19, 2021, and the matter was continued. Father did not request another hearing until February 2022. After Father again failed to appear for the initial hearing set for June 7, 2022, the trial court dismissed the paternity matter for failure to prosecute. On July 27, 2022, Father requested another hearing, which the trial court denied the following day because the cause had been dismissed.

[16] Meanwhile, on February 2, 2022, the court changed Children’s permanency plan to termination of parental rights with adoption by Children’s current foster placement. On April 13, 2022, DCS filed its second termination petition. On October 17, 2022, DNA testing confirmed Father was K.M.R.’s biological father. Thereafter, on October 21, 2022, DCS moved to dismiss the petition as to K.M.R. to give Father additional time to complete services. The court granted this motion to dismiss. Although the termination petition was dismissed, DCS continued to recommend termination and adoption as the permanency plan for K.M.R.

[17] On October 26, 2022, the court denied a request for Father to have virtual visits with K.M.R. because she did not know him as he had not had prior contact with her. The court also expressed concerns related to Father’s recent

domestic-violence incident in Wisconsin.² On December 28, 2022, Father filed his second petition to establish paternity, but again failed to appear at the initial hearing.

[18] As of January 2023, Children were doing well in their foster home. Although Father had completed DNA testing, he had yet to establish paternity. Father still needed to complete the ordered clinical assessment and follow all recommendations, participate in the Real Fatherhood Initiative, and establish paternity. Mother had also not completed the ordered clinical, parenting, and substance-abuse assessments or any additional recommended services. She had not visited with Children in over two years.

[19] On January 12, 2023, DCS filed its third and final termination petition as to K.M.R. The termination petition as to K.S.R. remained open. On March 30, the court held the fact-finding hearing on DCS's petitions to terminate Mother's parental rights as to Children and Father's parental rights as to K.M.R. At the hearing, the court heard from several FCMs and service providers who had been assigned to work with Parents. DCS noted that all services for Mother were closed out in June 2021, and at no time did Mother request further

² In June 2021, Father allegedly engaged in domestic violence against his girlfriend (and mother of his one-year-old child) at their home in Wisconsin. It was reported that Father punched his girlfriend several times in the face. The girlfriend's eleven-year-old daughter overheard the incident and grabbed a kitchen knife to intervene. Father reportedly punched the eleven-year-old in the head.

services. At the time of the termination hearing, Mother was living in Arkansas and refused to provide DCS with her address.

[20] Father made no progress with the required services and did not have a significant parent-child bond with K.M.R. Father had met K.M.R. once in nearly seven years. Although DNA testing established that Father was K.M.R.'s biological father, Father had not established paternity because he failed to appear for the hearings. As with his previous CHINS cases, Father did not meaningfully complete court-ordered services aimed at reunification.

[21] FCM Theresa Abell was assigned to Parents in July 2022. She testified at the termination hearing that despite being offered services, Parents never remedied the reasons for removal of Children, and she opined that termination of parental rights and adoption of Children by their current foster parents was in Children's best interests. On April 11, 2023, the court issued its order terminating Mother's parental rights to Children and Father's parental rights to K.M.R. Mother and Father separately appeal. Additional facts will be provided as necessary.

Discussion & Decision

1. Standard of Review

[22] The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). The law provides for the termination of these rights when parents are unable or unwilling to meet their

parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish parents, but to protect their children. *Id.*

[23] When DCS seeks to involuntarily terminate a parent's parental rights, it must allege and prove by clear and convincing evidence:

(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[.]

Ind. Code § 31-35-2-4(b)(2)(B). Among other things, DCS must also prove by clear and convincing evidence that termination is in the best interests of the child. I.C. § 31-35-2-4(b)(2)(C).

2. Conditions for Removal

- [24] Parents first challenge the trial court's finding that I.C. § 31-35-2-4(b)(2)(B)(i) had been satisfied, i.e., that DCS had established by clear and convincing evidence a reasonable probability that the conditions resulting in Children's removal and placement outside Parents' care will not be remedied. Mother maintains that she desired for Children to be placed with Maternal Grandmother. Father argues that the reason for K.M.R.'s removal was the result of Mother's issues, not his.
- [25] In making a determination in this regard, the trial court must judge a parent's fitness to care for their children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.* In conducting this inquiry, courts may consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*.
- [26] DCS presented evidence as to the services referred to Parents throughout the underlying CHINS action, including clinical assessments, parenting assessments, both individual and domestic violence counseling, and in addition, for Mother, a substance-abuse evaluation and random drug screens, supervised visitations, and home-based casework. Although Mother completed

assessments, she never followed through with recommendations or engaged in rehabilitative services. She was inconsistent with individual therapy, parenting education, home-based services, and drug screens. Mother told DCS that she did not want to participate in services, and the last time she visited with Children was sometime in 2020.

[27] Father has no parental bond with K.M.R., having seen her only once in her first six years of life. As with his previous CHINS actions, Father did not participate in K.M.R.'s case plan. Although he claimed to have independently completed certain services, he never provided proof. He never established paternity due to his failure to appear for hearings, which, along with the domestic violence incident in Wisconsin, kept him from visiting with K.M.R. K.M.R. has been removed from her home for four years. During that time, Father made no meaningful progress towards reunification and did not establish a willingness or ability to properly parent child.

[28] The evidence before the court clearly and convincingly establishes that there is a reasonable possibility that the conditions that resulted in removal of Children and their continued placement outside either Parent's home will not be remedied. The trial court's determination is supported by sufficient evidence.

3. Best Interests

[29] Parents argue that the evidence does not support the court's determination that termination of parental rights is in the best interests of Children. In determining whether termination of parental rights is in the best interests of a child, the trial

court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013).

In so doing, the trial court must subordinate the interests of the parent to those of the child, and the court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Our Supreme Court has explained that “[p]ermanency is a central consideration in determining the best interests of a child.” *G.Y.*, 904 N.E.2d at 1265.

[30] Parents never remedied the reasons for removal of Children. Mother stopped participating in services and has not visited with the Children in years. Father has met K.M.R. once since she was born in 2016 and has never demonstrated an interest in obtaining custody of K.M.R. Permanency was the primary consideration of the trial court, and rightly so. Children have been removed from the home for nearly four years. They are doing well in their foster home and the plan is adoption by their foster parents. Further, an FCM testified that Children need permanency and that termination was in their best interests. Based on the forgoing, the court’s conclusion that termination is in Children’s best interests is amply supported by the evidence and findings.

[31] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.