MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of Com.Q and M.Q. (Minor Children),

and

C.Q. (Father)
Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

November 28, 2022

Court of Appeals Cause No. 22A-JT-1353

Appeal from the Vanderburgh Superior Court

The Honorable Brett Niemeier, Judge

Juvenile court Cause Nos.
82D04-2201-JT-13
82D04-2201-JT-14

Bradford, Chief Judge.

Case Summary

[1] C.Q. ("Father") has two children: Com.Q and M.Q. (collectively, the "Children"). In October of 2020, the Indiana Department of Child Services ("DCS") filed petitions alleging the Children to be children in need of services ("CHINS"). In April of 2021, Father was arrested and ultimately incarcerated until January of 2022. Shortly thereafter, DCS filed termination of parental rights ("TPR") petitions, seeking to terminate Father's parental rights. In May of 2022, the juvenile court granted DCS's petitions based on Father's failure to complete reunification services, pattern of substance abuse, and instability. On appeal, Father raises two issues: (1) that DCS failed to make reasonable efforts to reunify Father with the Children, thereby violating his due process rights, and (2) that DCS produced insufficient evidence to support the termination of his parental rights. We disagree and affirm the juvenile court's decision.

Facts and Procedural History

[2] Father is the biological father of the Children, Com.Q born in 2014, and M.Q. born in 2016.[1] On October 1, 2020, DCS filed petitions alleging the Children to be CHINS. That same day, the juvenile court adjudicated the Children to be CHINS based on Father's and the mother's admissions, drug use, child neglect, and housing instability. DCS then placed the Children in foster care with their

[1] The Children's biological mother does not participate in this appeal.

aunt and uncle. The juvenile court held a dispositional hearing in November of 2020; however, Father did not appear and did not sign the parental-participation plan. In February of 2021, the juvenile court entered the dispositional order which required Father to complete substance-abuse and mental-health evaluations, submit to random drug screenings, and attend all scheduled visitation. The order also warned that Father's failure to comply could "lead to the termination of the parent-child relationship." Ex. Vol. I p. 219.

[3] The following April, nearly six months after DCS removed the Children, Father was arrested and charged with Level 2 felony robbery resulting in serious bodily injury, Level 3 felony criminal confinement while armed with a deadly weapon, Level 5 felony battery by means of a deadly weapon, Level 5 felony intimidation using a deadly weapon, two counts of Level 6 felony auto theft, and two counts of Class B misdemeanor criminal mischief for acts he committed against his mother-in-law. Father had also had two prior DCS cases, one in 2016 involving child neglect due to a drug-exposed infant, and another in 2019 involving the Children's welfare after which DCS removed them from Father's care and placed them with their mother. Father also has a criminal history including Class C felony stalking, Class A misdemeanor invasion of privacy, and Class C misdemeanor battery from 2008, and Class D felony stalking from 2009. After Father pled guilty to robbery resulting in bodily injury, two counts of auto theft, and two counts of criminal mischief, the

juvenile court sentenced him to six years, the first of which was executed, and the remaining five suspended to drug and alcohol probation services.

[4] After the CHINS adjudication in October of 2020 until his arrest in April of 2021, Father had not participated in reunification services. DCS established a drug screen referral for Father in October of 2020; however, the referral had been suspended in December of 2020 due to Father's failure to comply. Likewise, DCS had set up a supervised visitation referral program so Father could visit the Children, but that had also been suspended in December of 2020, when Father failed to visit. DCS had made another referral visitation program for Father in early 2021, and Father had failed to visit the Children by the time of his arrest in April.

[5] By March of 2021, Father had not engaged in any reunification services. Father was noncompliant with his supervised visitation and had not attended any visits with the Children, and he had not participated in substance-abuse and mental-health evaluations or in random drug screens. As a result of Father's failure to participate in reunification services, in September of 2021, the juvenile court changed the Children's permanency plan to include adoption.

[6] While Father was incarcerated from April of 2021 until February of 2022, Family Case Manager Shane Corbin ("FCM Corbin") met with Father six times. During those visits, FCM Corbin and Father discussed reunification services offered in jail; however, FCM Corbin explained that he was unsure "how many services were actually available" in jail. Tr. Vol. II p. 63. As a

result, Father could not complete reunification services while he was incarcerated.

[7] Eventually, in January of 2022, DCS filed TPR petitions, seeking to terminate Father's parental rights. That same month, Father was released from incarceration. Shortly after Father's release, DCS provided him with court paperwork and informed him that DCS had petitioned for TPR. Further, DCS explained to Father that "if there was any chance of regaining his children he needed to reengage immediately with all services and stay in contact with [FCM Corbin]." Tr. Vol. II p. 63. However, by the April 2022 TPR fact-finding hearing, Father "still ha[d] not obtained a substance abuse and mental health evaluation" and had only "participated in roughly half of the drug screen opportunities that [DCS had] asked him to participate in" since his release. Tr. Vol. II p. 67. Based on FCM Corbin's experience with Father, he opined that "there is not a reasonable probability that the reason for removal in this case will be remedied" and that the Children's "well[-]being will be impacted negatively if [Father]'s rights are not terminated and they're not adopted." Tr. Vol. II p. 65.

[8] At the April fact-finding hearing, Father admitted that the last time he had seen the Children was "about a year and a half" ago when they were removed in October of 2020, and he had "had no contact with them." Tr. Vol. II pp. 21, 26. Father admitted that, while the CHINS case was open for six months prior to his incarceration, he failed to participate in reunification services because he was "addicted to drugs." Tr. Vol. II p. 23. Father admitted that he had been

addicted to methamphetamine since he was seventeen years old and that he had smoked K2[2] "here and there." Tr. Vol. II pp. 29–30. However, Father claimed at the April hearing that he had been "clean" for the last four months. Tr. Vol. II p. 29. At that time, Father was living in a two-bed hotel room at the "Econo Lodge" with his mother, who was paying for the space. Tr. Vol. II pp. 21–22. While Father had applied for several jobs, he was unemployed at the time of the April hearing. Father further admitted that "at this moment" he did not have a way to provide for the Children. Tr. Vol. II p. 84. However, FCM Corrine Howell (who had assumed the case in March of 2022) noted that Father had been working with parent aides on at least seven occasions since his release from jail.

[9] Since being placed with their aunt and uncle, the Children have "really blossomed" and "come into their own." Tr. Vol. II p. 64. FCM Corbin testified that, prior to removal, the Children had "had a lot of trauma" and had not "experienced a lot of stability in terms of family life." Tr. Vol. II pp. 64–65. Court-appointed special advocate Mary Abney ("CASA Abney") noted that the Children are "a little more afraid of Father" and when asked if they would like to see him, the answer is "always no." Tr. Vol. II p. 75. CASA Abney testified that for six months prior to Father's incarceration, he had "had the opportunity to put the children's best interest at heart" and had been "given resources to help [him] get the children back[,]" but Father had failed to satisfy his

[2] K2 is an "illegal synthetic cannabinoid." Ex. Vol. I p. 244.

reunification requirements. Tr. Vol. II p. 79. As a result, CASA Abney concluded that it was in the Children's best interests to terminate Father's parental rights and for their aunt and uncle to adopt them. Based on this evidence and testimony, the juvenile court granted DCS's TPR petitions.

Discussion and Decision

[10] The Fourteenth Amendment to the U.S. Constitution protects parents' right to raise their children; however, that right "may be terminated when parents are unable or unwilling to meet their parental responsibilities." *In re N.G.*, 51 N.E.3d 1167, 1169 (Ind. 2016) (citing *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). In other words, parental rights, when necessary, must be subordinate to the children's best interests. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008). The termination of parental rights is appropriate "where the children's emotional and physical development is threatened." *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. However, juvenile courts "need not wait until the children are irreversibly harmed […] before terminating the parent-child relationship." *Id*.

[11] When reviewing the termination of a parental relationship,

> [w]e do not reweigh the evidence or determine the credibility of witnesses, but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment.

In re N.G., 51 N.E.3d at 1170. Given the juvenile court's proximity to the evidence and witnesses, we will reverse its decision to terminate a parent-child relationship only if the decision is clearly erroneous. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). "A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. A judgment is clearly erroneous only if the findings of fact do not support the [juvenile] court's conclusions thereon, or the conclusions thereon do not support the judgment." *In re A.B.*, 887 N.E.2d at 164 (internal citations omitted).

I. Due Process

[12] First, Father makes a due process challenge. However, Father did not raise his due process claim at the trial level. As a result, he has waived appellate review of that claim. "It has long been the general rule in Indiana that an argument or issue presented for the first time on appeal is waived for purposes of appellate review." *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015); *see McBride v. Monroe Cnty. Off. of Fam. and Child.*, 798 N.E.2d 185, 198 (Ind. Ct. App. 2003) (holding that Mother waived any due process challenge by failing to raise her constitutional claim at the termination hearing).

II. Sufficiency of the Evidence

[13] Second, Father challenges the sufficiency of the evidence supporting the termination of his parental rights. To support the termination of Father's parental rights to the Children, DCS needed to prove:

(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.
(ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
(iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
(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). Here, Father challenges the juvenile court's determinations under paragraphs (B) and (C). 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 in that paragraph

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 874, 882 (Ind. Ct. App. 2004).

[14] First, the record supports the juvenile court's determination that the conditions that led to the Children's removal and continued placement outside of Father's home would not be remedied. As mentioned, the Children were removed and adjudicated to be CHINS due to Father's substance abuse in taking unprescribed amphetamines and for living with a person with a substantiation for sexual abuse. DCS kept the Children in foster care with their aunt and uncle because Father "was not in contact with DCS [from] approximately 11/4/2020 to 4/12/2021" and he "avoided contact with DCS family case managers and did not meet to discuss services or his children prior to becoming incarcerated" in April of 2021. Ex. Vol. I p. 244. Father failed to engage in reunification services, including visitation, drug screens, parent-aid services, and drug-abuse and mental-health assessments for the six months the case was open prior to his incarceration. During the CHINS case, Father also engaged in criminal conduct, which included "pistol whipping [the Children's] maternal grandmother" and auto theft. Appellant's Br. p. 44. Father also admitted that, at the time of the April fact-finding hearing, he was unable to provide for the Children.

[15] Notably, the juvenile court evaluated Father's habitual patterns of conduct to determine that Father would likely not remedy the conditions for removal. *K.T.K. v. Ind. Dept. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1234 (Ind. 2013). Father had failed to engage in reunification services before his incarceration, and, even after his release, he had still only partially engaged in such services. For instance, Father had only "participated in roughly half of the drug screen[s]" DCS had asked him to after his release and had not yet completed his mental-health and drug-abuse evaluations. Tr. Vol. II p. 67; *see In re A.B.*, 924 N.E.2d 666, 671 (Ind. Ct. App. 2010) ("A parent whose drug use led to a child's removal cannot be permitted to refuse to submit to drug testing, then later claim the DCS has failed to prove that the drug use has continued.").

[16] While Father argues that he "was making substantial progress towards completing" reunification services after his release, it is within the juvenile court's discretion to give more weight to habitual conduct than to recent remedial steps. *K.T.K.*, 989 N.E.2d at 1234. "[T]he time for parents to rehabilitate themselves is during the CHINS process, *prior to* the filing of the petition for termination." *Prince v. Dept. of Child Servs.*, 861 N.E.2d, 1223, 1230 (Ind. Ct. App. 2007) (emphasis in original). Father's "pattern of unwillingness to deal with" his substance-abuse and parenting issues and "to cooperate with those providing social services" supports a conclusion that "there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In short, Father failed to persuade the juvenile court that the reasons for the

Children's removal would be remedied, and we cannot say the juvenile court's decision is clearly erroneous. To reiterate, we need not address Father's well-being contention under Indiana Code section 31-35-2-4(b)(2)(B)(iii). *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. 1999) ("The statute is written in the disjunctive; it requires the [juvenile] court to find only one of the [three] requirements of subsection (B) by clear and convincing evidence.").

[17] Second, the record supports the juvenile court's conclusion that termination is in the Children's best interests under Indiana Code section 31-35-2-4(C). In determining whether termination serves a child's best interests, we "must look at the totality of the evidence." *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). While Father has participated in some reunification services, including working with parent aides and some drug screenings, Father has failed to complete the required services, and his habitual conduct suggests that DCS's concerns will persist. Moreover, Father's previous living arrangements with a person with a substantiation for sexual abuse, his current living situation with his mother in a two-bed hotel room at the "Econo Lodge[,]" and Father's admission at the April of 2020 fact-finding hearing that he did "not at this moment" have a way to support the Children do not serve the Children's best interests. Tr. Vol. II pp. 21, 84. "A parent's historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests." *In re A.K.*, 924 N.E.2d at 221.

[18] Further, Indiana courts have long relied on the recommendations of the FCM, CASA, and other service providers when considering whether "a reasonable finder of fact could conclude based on clear and convincing evidence" that "the termination is in the best interests of" a child. *In re N.G.*, 51 N.E.3d at 1173; *see also K.T.K*, 989 N.E.2d at 1235–36 (relying on testimony from the family case manager, guardian ad litem, and CASA to determine that termination of parental rights served the children's best interests). FCM Corbin explained that the Children's "well being will be impacted negatively if [Father]'s rights are not terminated and if they're not adopted." Tr. Vol. II p. 65. Additionally, the Children's therapist suggested that reintroducing Father to the Children would "[p]otentially" be a dysregulating event, and "any change is going to be d[y]sregulating, especially for children who've been through a lot of change already." Tr. Vol. II p. 40. CASA Abney testified that she believed termination would serve the Children's best interests because "[t]hey are in a very stable, loving, caring home" with their aunt and uncle where "[t]hey are thriving, flourishing, [and] learning so many rules and consequences if they do not follow the rules." Tr. Vol. II p. 80.

[19] Essentially, Father asks for additional time which "would give [him] an opportunity" to continue drug screenings, working with parent aides, find suitable housing and employment, complete the mental health and substance abuse evaluation, complete all recommended treatment, and resume visitation. Appellant's Br. p. 33. However, we cannot make children "wait indefinitely for their parents to work toward preservation or reunification." *In re E.M.*, 4

N.E.3d at 648. "[C]hildren have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships." *K.T.K.*, 989 N.E.2d at 1230. We cannot agree with Father that the juvenile court's decision was clearly erroneous. Father's argument effectively amounts to nothing more than a request to reweigh the evidence, which we will not do. *T.L. v. J.L.*, 950 N.E.2d 779, 783 (Ind. Ct. App. 2011).

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

May, J., and Pyle, J., concur.