

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: K.B. III (Minor Child),

J.B. (Mother) and
K.B. II (Father)

Appellants-Respondents,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

October 22, 2021

Court of Appeals Case No.
21A-JT-981

Appeal from the Wayne Superior
Court

The Honorable Darrin M.
Dolehanty, Judge

Trial Court Cause No.
89D03-2101-JT-1

Weissmann, Judge.

- [1] K.B. II (Father) and J.B. (Mother) jointly appeal the juvenile court's termination of their parental rights as to K.B. III (Child). The Indiana Department of Child Services (DCS) removed Child from the care of Mother and Father (Parents) just before Child's first birthday, primarily due to Father's ongoing domestic violence against Mother. Over the next year, Father physically abused Mother in multiple ways such as reportedly strangling her, knocking out her teeth, blackening her eyes, and regularly beating her to the point where she lost consciousness.
- [2] Parents argue that the juvenile court erred in concluding the domestic violence was not likely to be remedied. But the court's unchallenged findings show that, after Child's removal, Father's violence against Mother continued, Mother was unable to separate from Father, and neither Father nor Mother completed DCS services aimed at ending the cycle of violence. We affirm.

Facts

- [3] DCS received a report of domestic violence between Parents in late August 2019. The Family Case Manager (FCM) assigned to investigate the report soon located and visited Mother and Child at a residence in Richmond, Indiana. The FCM observed that Mother had a black eye and a broken finger. Mother informed the FCM that Father committed daily acts of violence against her and had choked her in Child's presence just one day earlier. Mother also admitted to taking non-prescribed pain medication.

- [4] The FCM offered to take Mother and Child to a Richmond women's shelter, but Mother declined because she was afraid Father would track her down there. The FCM alternatively offered to take Mother to a shelter in Indianapolis. But Mother again declined. The FCM advised Mother that, if she refused to go to a shelter, Child would be removed from her care due to the ongoing domestic violence. Mother refused, and Child was taken into DCS protective custody.
- [5] The juvenile court held a detention hearing the following day, determined it was in Child's best interests to be removed from Parents' care, and granted DCS temporary wardship of Child. That same day, DCS filed a petition alleging Child to be a child in need of services (CHINS). Child was adjudicated a CHINS three months later.
- [6] At a dispositional hearing in January 2020, the juvenile court ordered Parents to participate in services, including individual therapy sessions, home-based case management, and supervised visits with Child. The court also prohibited Parents from using illicit drugs. Mother was further required to complete a substance abuse assessment and to follow all treatment recommendations.
- [7] On July 16, 2020, Mother began a two-phase substance abuse program at Volunteers of America. Phase 1 was a 21-day inpatient treatment program, which Mother successfully completed. Phase 2 provided for additional inpatient treatment, during which Mother had access to a telephone. Mother soon contacted Father and, on August 24, 2020, checked herself out of treatment. After leaving, Mother returned to Father and resumed using drugs.

- [8] Three weeks later, the juvenile court held a permanency review hearing and approved Child's adoption as a concurrent permanency plan. The court also modified its dispositional order to mandate that Parents complete a domestic violence assessment and to follow all treatment recommendations. Two months later, Parents were held in contempt of court for failing to comply with the court's dispositional order.
- [9] In January 2021, DCS petitioned to terminate Parents' parental rights as to Child. After three days of evidentiary hearings, the juvenile court ordered their parental rights terminated. Parents now appeal.

Standard of Review

- [10] Parents have a constitutionally protected interest in the care, custody, and control of their children. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). This interest, however, is not absolute. *Id.* The law provides for the termination of parental 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).
- [11] When reviewing a termination of parental rights, we apply a two-tiered standard of review. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). First, we determine whether the evidence supports the findings. *Id.* Second, we determine whether the findings support the judgment. *Id.* We do not reweigh evidence or judge witness credibility. *Id.* The judgment will be set aside only if it is clearly erroneous. *Id.*

Discussion and Decision

[12] Parents do not challenge the juvenile court’s findings of fact; they admit that the evidence “certainly supports” those findings. Appellant’s Br. p. 8. Accordingly, we accept the court’s findings of fact as true. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

[13] Parents argue that the juvenile court’s findings do not support its judgment. Before parental rights may be terminated, Indiana Code § 31-35-2-4(b)(2)(B) requires the State to prove, among other things, that one 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).

I. Likely Threat to Child’s Well-Being

[14] Here, the juvenile court found clear and convincing evidence under both subsections (i) and (ii) above. On appeal, however, Parents only challenge the former conclusion—that the conditions resulting in Child’s removal are not

likely to be remedied. Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, we could affirm based solely on the court's unchallenged conclusion that the continuation of the parent-child relationship likely poses a threat to Child's well-being. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999). However, we opt to address Parents' argument concerning the likelihood that the conditions which resulted in Child's removal will be remedied.

II. Conditions Unlikely to Be Remedied

[15] The juvenile court's findings of fact support its conclusion that the conditions that resulted in Child's removal are not likely to be remedied. Child was removed from Parents' care due to Father's domestic violence and Mother's drug use. The unchallenged findings provide ample support for the conclusion that these conditions are not likely to be remedied.

A. Father's Domestic Violence

[16] As the juvenile court summarized in its termination order: "Throughout the course of the CHINS case, Mother reported, and witnesses confirmed multiple instances of ongoing domestic violence between Mother and Father." App. Vol. II, p. 148. "Mother went to a local women's shelter a few times, and at one point moved into an inpatient treatment facility . . . for a few weeks. Each time, Mother returned to Father, with additional episodes of abuse following." *Id.* Below are *some* of the lowlights:

- Around September 27, 2019, an FCM observed that Mother’s four front teeth were missing. Mother reported that Father had knocked them out. *Id.* at 137.
- On May 31, 2020, a Lynn Police Officer responded to a domestic violence call and found Mother with red marks on both sides of her neck. Mother reported that Father had choked her during a fight and batters her “all the time,” usually until she passes out. *Id.*
- On July 13, 2020, an FCM observed that both of Mother’s eyes were black. Mother reported that Father was responsible for the injuries. *Id.* at 139.
- On October 8, 2020, a Richmond Police Officer responded to a domestic violence call and found Mother’s face to be red and one of her eyes to be swollen. Mother reported that Father had smacked her. *Id.* at 144.

[17] Significantly, the juvenile court found that “neither parent . . . participated in the services offered to address” the “serious physical violence that permeates the findings of fact set out above.” *Id.* at 149. We therefore conclude that the court’s findings support its conclusion that Father’s domestic violence against Mother was not likely to be remedied.

[18] Parents’ only substantive argument on appeal is that the juvenile court’s conclusion fails to consider that “parents were separated.” Appellant’s Br. p. 12. But Parents point to no evidence indicating that they were meaningfully separated during either the CHINS case or the termination proceedings. Moreover, our review of the record finds none. *See Ind. Appellate R. 46(A)(8)(a)* (“Each contention must be supported by citations to . . . the Appendix or parts of the Record on Appeal relied on[.]”).

B. Mother's Drug Use

[19] As to Mother's drug use, Parents contend it was an "illusory" condition for Child's removal. Appellants Br. p. 12. We disagree. According to the juvenile court's unchallenged findings:

[A]s early as the date of first contact between Mother and the Wayne County DCS, Mother reported that she has been using drugs. As noted in the above findings, Mother has abused marijuana and methamphetamine, while also using buprenorphine as medically assisted treatment. Services to help Mother address her substance use were offered from the beginning of the CHINS case, and referrals were still open through the trial of this termination of parental rights case. Mother was able to find abstinence and sobriety for a nice stretch of several weeks while she was in inpatient treatment Once Mother checked herself out of treatment, she returned to substance abuse, testing positive for use of methamphetamine. Mother acknowledged ongoing use and the need for treatment, even while this termination of parental rights case has been pending. Despite the availability of outpatient and inpatient treatment options, Mother has not participated in the treatment she admits she needs.

[20] App. Vol. II. p. 149. The juvenile court also noted that, in the opinion of Mother's outpatient addiction therapist, "Mother's relationship with Father is a barrier for her to get needed help." *Id.* at 143. These findings support the juvenile court's conclusion that Mother's drug use was not likely to be remedied.

[21] Because the juvenile court's findings of fact support its termination of Parents' parental rights as to Child, the judgment is affirmed.

[22] **Affirmed.**

Mathias, J., and Tavitas, J., concur.