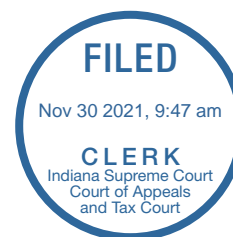


MEMORANDUM DECISION

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 Matter of the Termination
of the Parent–Child Relationship
of J.C. (Minor Child)

and

D.C. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

November 30, 2021

Court of Appeals Case No.
21A-JT-1368

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause No.
72D01-2012-JT-102

Bradford, Chief Judge.

Case Summary

[1] D.C. (“Father”) is the biological father of J.C. (“Child”). The Department of Child Services (“DCS”) became involved with Father, C.C. (“Mother”) (collectively, “Parents”), and Child on March 4, 2018. DCS filed a petition alleging that Child was a child in need of services (“CHINS”) due to domestic violence issues between and illegal drug use by Parents. Child was eventually found to be a CHINS. On June 3, 2019, four days after this initial CHINS case was dismissed and Child was returned to Parents’ care, DCS again became involved with the family due to domestic violence between and illegal drug use by Parents. Parents subsequently admitted that Child was once again a CHINS. They were both ordered to complete certain services. DCS eventually petitioned to terminate Parents’ parental rights after Parents failed to successfully complete the ordered services. Following an evidentiary hearing,

the juvenile court granted DCS's termination petition. On appeal, Father¹ contends that DCS failed to present sufficient evidence to support the termination of his parental rights. We affirm.

Facts and Procedural History

[2] Child was born to Parents on May 2, 2016. On March 4, 2018, DCS removed Child from Parents care after receiving a report alleging that Child was a victim of neglect. At the time, Mother admitted to the DCS case worker that she and Father had engaged in a domestic incident during which Father had pushed her, after which she had “‘flipped out’ and smacked [Father] three or four times.” Ex. Vol. III p. 39. While Parents were fighting, Child “fell out of [Mother’s] arms and hit the floor.” Ex. Vol. III p. 39. As a result of the incident, Father was charged with domestic battery on a person less than fourteen years of age due to Child falling to the floor and having “marks on his left side, just above his diaper.” Ex. Vol. III p. 9. Father eventually pled guilty to this charge and was sentenced to a 547-day suspended sentence.

[3] In connection to the above-described events, DCS filed a CHINS petition on March 6, 2018. The juvenile court subsequently adjudicated Child to be a CHINS. Parents complied with court-ordered services and, on May 30, 2019, the juvenile court closed the CHINS case and returned Child to Parents’ care.

¹ Mother’s parental rights were also terminated but she does not participate in this appeal.

[4] Four days later, on June 3, 2019, DCS again removed Child from Parents' care after DCS employees witnessed a domestic dispute between Parents. Mother also had a stab wound on her hip. Mother gave conflicting reports of how she sustained the stab wound. At the time, Father appeared to be under the influence, "very twitchy[,] and like his thoughts and movements were sped up." Ex. Vol. I p. 22. Parents both subsequently tested positive for methamphetamine.

[5] On June 5, 2019, DCS filed a verified petition alleging that Child was a CHINS. The juvenile court again found Child to be a CHINS after Parents admitted that there were ongoing issues with domestic violence and that they could benefit from services. On August 22, 2020, the juvenile court issued a dispositional order in which it ordered Father to complete certain services, including, *inter alia*, the following:

- contact his Family Case Manager ("FCM") weekly to allow the FCM to monitor his compliance with the court's orders;
- enroll in any recommended services or programs;
- keep all appointments;
- refrain from using any illegal controlled substances and alcohol;
- complete a parenting assessment and successfully complete all recommended services;
- participate in and successfully complete an Intensive Family Preservation program;

- complete a substance assessment and successfully complete all recommended treatments/programs;
- submit to random drug screens;
- complete a psychological evaluation and successfully complete any recommended services;
- refrain from committing any act of domestic violence; and
- attend all scheduled visitations with Child and follow all visitation rules and procedures.

Ex. Vol. I pp. 60–62. The permanency plan was later changed to adoption due to Father’s inability to maintain sobriety and lack of progress towards reunification.

[6] On December 29, 2020, DCS filed a petition to terminate Parents’ parental rights to Child. The juvenile court conducted an evidentiary hearing on DCS’s petition on April 20, 2021.² Despite being aware of the evidentiary hearing, Father did not appear. During the evidentiary hearing, DCS presented evidence outlining Father’s continuing use of illegal drugs and ongoing concerns of domestic abuse between Father and Mother. At the conclusion of the hearing, the juvenile court made verbal findings and terminated Father’s parental rights. The juvenile court entered its written order terminating Father’s parental rights to Child on June 3, 2021.

² The evidentiary hearing was conducted via Zoom “because of COVID.” Tr. Vol. II p. 8.

Discussion and Decision

[7] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005).

Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[8] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

[9] In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[10] In challenging the juvenile court's order, Father contends that the evidence is insufficient to sustain the termination of his parental rights to Child. In order to support the termination of Father's parental rights to Child, DCS was required to prove the following:

- (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....
- (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). Father argues that the evidence is insufficient to prove subsection (B). We will therefore limit our review to that subsection.

[11] In challenging the sufficiency of the evidence to support the termination of his parental rights, Father contends that “DCS failed to prove by clear and convincing evidence that the reasons for removal would not be remedied and/or that maintaining the parent-child relationship endangered the Child.” Appellant’s Br. p. 9. 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 therein 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 at 882.

[12] In this case, the juvenile court found that Father had made no overall progress and was unfit to parent Child because:

- a. Both parents have continued to abuse illegal and/or controlled substances throughout the underlying CHINS case and have tested positive for illegal and/or controlled substances throughout the underlying CHINS case.
- b. Both parents have each failed to show up for or attend treatment programs even after receiving approval to attend those programs and being offered transportation.
- c. Both parents have attended visits with the Child while

under the influence of illegal and/or controlled substances. During one visit, a parent did not know who the Child was during the visit.

d. There is a pattern of domestic violence occurring in the home, and the Child has been present during incidents of domestic violence between the parents resulting in the Child falling to the floor.

Appellant's App. Vol. II p. 76. Based on these findings, the juvenile court concluded that there is a reasonable probability that the conditions leading to the removal of Child from Father's care would not be remedied.

[13] In challenging the juvenile court's decision, Father challenges only one of the court's findings: that at least one of the domestic violence episodes had involved Child and resulted in Child falling to the floor.³ During the first CHINS proceedings, which again were dismissed just four days before the second and underlying CHINS proceedings were initiated, Mother admitted to a DCS case worker that while she and Father were fighting, Child "fell out of her arms and hit the floor." Ex. Vol. III p. 39. In finding that domestic violence between Mother and Father had resulted in Child falling to the floor, it is clear that the juvenile court was considering records relating to both of the CHINS cases involving the family. Father does not argue that it was inappropriate for the juvenile court to do so. Given the close temporal proximity of the two cases, we believe that it was wholly appropriate for the

³ Given that Father does not challenge the juvenile court's remaining findings, those findings "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

juvenile court to have considered the continuing nature of the pattern of domestic violence issues between Mother and Father.

[14] Father argues that he visited with Child on a regular basis. However, the record demonstrates, and Father admits, that he was under the influence for a number of his visits with Child. Furthermore, while Father may have been partially compliant with the case plan, the evidence clearly demonstrates that he did not remedy the conditions that led to Child's removal from his care. Father had continued to use and test positive for illegal substances, including methamphetamine and fentanyl. The use of these substances has proven to be a trigger for the somewhat frequent domestic incidents between him and Mother. FCM Hale testified that she did not believe that the conditions resulting in Child's removal from Father's care were likely to be remedied "[d]ue to the continued substance use, um, the inconsistency of services, um, and the potential for domestic violence in the future, uh, just due the indicated triggers by the parents." Tr. p. 33. Given Father's failure to remedy the conditions, we conclude that the evidence is sufficient to support the juvenile court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from Father's care would not be remedied. Father's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

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

Crone, J., and Tavitas, J., concur.