

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.



ATTORNEY FOR APPELLANT

Danielle L. Flora
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of K.H. (Minor Child)

and

I.H., Sr. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

May 17, 2022

Court of Appeals Case No.
21A-JT-2636

Appeal from the Allen Superior
Court

The Honorable Sherry A. Hartzler,
Judge Pro Tempore
The Honorable Beth A. Webber,
Magistrate

Trial Court Cause No.
02D08-2101-JT-14

Bradford, Chief Judge.

Case Summary

[1] I.H., Sr. (“Father”) is the biological father and S.K. is the biological mother (“Mother”) of K.H. (“Child”).¹ The Department of Child Services (“DCS”) became involved with family and, on January 31, 2017, removed Child from Mother and Father’s (collectively, “Parents”) care and filed a petition alleging that Child was a child in need of services (“CHINS”) after receiving reports that neither Mother nor Father could provide Child with the necessary care and support. Parents subsequently admitted that Child was a CHINS and were ordered to complete certain services. DCS eventually petitioned to terminate Parents’ parental rights to Child after both failed to successfully complete the ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Father 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 Mother on August 13, 2014. On August 29, 2014, Father executed a paternity affidavit establishing his paternity of Child. Child was

¹ Mother’s parental rights to Child have also been terminated. Mother, however, does not participate in this appeal.

removed from Parents' care on January 31, 2017, due to allegations of abuse and neglect. That same day, DCS filed a petition alleging that Child was a CHINS.

[3] On February 7, 2017, DCS filed an amended petition alleging that Child was a CHINS. In its petition, DCS alleged that Mother could not care for Child on her own and that Father did not regularly visit Child, did not provide financial support, and was unwilling or unable to provide necessary care and supervision for Child. The juvenile court adjudicated Child to be a CHINS on February 27, 2017, after Parents admitted that Child was a CHINS and that they could benefit from services. That same day, the juvenile court entered a dispositional order in which it ordered Father to complete certain services, including refraining from criminal activity; maintaining clean, safe, and appropriate sustainable housing at all times; notifying DCS of any changes of household within forty-eight hours; cooperating with all case workers, the guardian ad litem ("GAL") and the court-appointed special advocate ("CASA"); attending all appointments and maintain communication with DCS; submitting to random drug screens and refraining from using illegal drugs and alcohol; and submitting to a psychological diagnostic assessment and following all recommendations. Father, however, failed to successfully complete the ordered services.

[4] On March 1, 2021, DCS filed a petition to terminate Father's parental rights to Child. The juvenile court held an evidentiary hearing on DCS's petition on August 3 and 5, 2021. During the evidentiary hearing, DCS presented evidence

outlining Father’s failure to make significant progress towards providing Child with a safe and stable living environment. Following the conclusion of the evidence, the juvenile court took the matter under advisement. On November 1, 2021, the juvenile court entered its order terminating Father’s parental rights to Child.

Discussion and Decision

[5] “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.*

[6] 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.*

[7] 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.*

[8] 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....
 - (iii) The child has been removed from the parent ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services....
- (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 limits his claim that DCS failed to present sufficient evidence to establish the above-stated statutory requirements by clear and convincing evidence to the factors outlined in subsection (B). We will therefore limit our review to this subsection.

[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.

[10] In this case, the juvenile court made numerous findings about the conditions resulting in the removal and the likelihood that said conditions would be remedied. Specifically, the juvenile court found:

28. The Court finds that [DCS] initially became involved with the family due to [Parents] living in various shelters and staying with friends with no stable, sustainable housing of their own, lack of employment to provide income for the needs of the [C]hild, illegal use of spice, and the parties having mental health issues that interfered with their ability to provide for the needs of the [C]hild and themselves.

30. The Court finds that as the case progressed, [Parents] were ordered to participate in substance abuse services due to substance abuse issues.

31. The Court finds that several referrals for services and visitations were made at several different agencies over the 4.5 years that the underlying CHINS case was open, without [Parents] successfully completing any of the services.

33. The Court finds that [Father] resided at the Rescue Mission for a short period of time in 2020.

34. The Court finds that [Parents] have moved from different hotels and temporary housing situations throughout the pendency of the case.

35. The Court finds that [Parents] failed to maintain communication regularly with service providers and at times with the DCS.

36. The Court finds that [Parents] were unsuccessfully discharged from most of their services due to their failure to maintain communication with services providers or failure to attend meetings and appointments that were scheduled.

40. The Court finds that [Father] was recommended to attend inpatient substance abuse treatment by Dockside in 2020.

41. The Court finds that [Father] failed to attend outpatient substance abuse therapy and failed to successfully complete it through Dockside.

42. In addition, the Court finds that [Father] never attended inpatient substance abuse treatment that was recommended by Dockside in 2020.

43. The Court finds that since birth, [Child] has never resided with [Father].

46. The Court finds that [Child] was removed from the care of [Parents] for the majority of his life, the last 4 years and 5 months.

47. The Court finds that [Child] has been diagnosed with autism and requires direct supervision and constant attention.

48. In addition to being non-verbal with his communication and needing to point at photos or objects or take someone to what he needs, [Child] lacks social skills, throws himself on the floor, needs help with his toilet habits, and elopes from homes and rooms if not carefully supervised.

57. The parties participated in home[-]based services through Lutheran Social Services beginning in May of 2021. There were several defined goals. One of the goals was to obtain sustainable and suitable housing.

58. At the time of the termination trial, the parties were living together in a one room hotel room (that had a separate bathroom) with one bed, a microwave and a refrigerator.

59. The goal was to find a handicap accessible apartment or house.

60. Due to each parent having two evictions on their record and owing \$1000 to the Fort Wayne Housing Authority, there [were] barriers to obtaining housing through public assistance at that time.

61. Another one of the goals for home[-]based services that started with Lutheran Social Services in May of 2021 was to attend medical appointments and other appointments on time.

62. [Parents] appeared late for the actual termination trial on both dates.

65. The Court finds that [Father] was referred for Counseling at Phoenix Associates in April of 2021. [Father] did not attend any appointments at Phoenix Associates for his counseling related to trauma, even though he scheduled 2 separate appointments.

66. The referrals expired for the services through Phoenix Associates on June 30, 2021[,] for [Parents] with neither initiating any of the services referred.

67. The Court finds that neither parent can provide safe, stable housing for their child as they have not been able to maintain their own independent housing throughout the pendency of the CHINS case.

69. The Court finds that [Father] has never obtained unsupervised parenting time with [Child] since his removal.

70. The Court finds that on the occasions when [Father] did complete drug screens, he tested positive for methamphetamine

and amphetamines regularly, cocaine on one occasion, and occasionally THC.

72. The Court finds that [Father] did not go to the DCS office for drug screens when requested by the [family case manager (“FCM”)]. However, when FCM Darci Collison would go to [Father]’s location, he did not refuse to drug screen for her.

73. The Court finds that [Father] did not comply with calling into the Cordant drug screening program. His only Cordant drug screens occurred when FCM Collison went to [Father]’s location with drug screens.

75. The Court finds that [Father]’s substance abuse issues negatively interfered with his ability to maintain stable, independent housing, transportation, employment, and successfully treat and maintain his mental health, all which affect his ability to provide for and care for [Child].

77. The Court finds that [Child’s GAL] has concluded (along with the [FCM]) that [Child’s] best interests are served by the termination of parental rights and adoption for [Child]. In support of her conclusion, Ms. Franklin, the [GAL] for [Child], states she has concerns for the number of missed visits between the parents and child. She also had concerns due to the significant needs of [Child] specifically. [Parents] have not benefitted from the services and cannot safely care for [Child]. The GAL has concerns regarding [Parents’] continued substance use and lack of successful substance abuse treatment, lack of treatment regarding mental health issues, along with concerns for continued instability in housing. The GAL does not believe [Parents] have the ability to handle [Child’s] great needs going forward for hourly supervision and substantial education and

medical needs. The GAL also pointed out that [Parents] failed to follow through with medication management to help address their mental health needs.

78. The GAL testimony all point to reasons why [Parents] would not be appropriate caretakers or providers for [Child] and why their inability to rectify the issues that initiated the case with the Department leads to the termination of their parental rights.

Appellant's App. Vol. II pp. 23–27. Based on these findings, the juvenile court concluded that

the court must find that there is reasonable probability that the conditions that resulted in [Child's] removal or the reasons for placement outside the home of [Parents] will not be remedied; or that continuation of the parent-child relationship poses a threat to the well[-]being of [Child] [Indiana Code section 31-35-2-4(b)(2)(B)(i and ii) and Indiana Code section 31-35-2-8]. By clear and convincing evidence the court determines that there is a reasonable probability that reasons that brought about [Child's] placement outside the home will not be remedied. [Parents] have not completed substance abuse treatment successfully and have, on the occasions where they have submitted to drug screens, continued to test positive for methamphetamine, amphetamines, cocaine, and THC on those drug screens. They have not shown stability in housing or employment. [Parents] have no reliable transportation. The Court concludes that the [Parents] never demonstrated sobriety despite having 4.5 years to do so. Further, the root of Father's issues were never fully discovered as he failed to participate in therapy and substance abuse treatment... The Court concludes that [Parents] have not demonstrated that they have benefitted from the services provided to them for the last 4.5 years. Therefore, not only have [Parents] not remedied the issues that started their involvement with [DCS], but by not addressing their substance abuse issues, mental health issues and unstable

housing issues, continuing the parent child relationship with this child would pose a threat to the child's well[-]being.

Appellant's App. Vol. II p. 28.

[11] Father does not specifically challenge any of the juvenile court's findings on appeal, so they "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). The unchallenged findings demonstrate that Father has continued to test positive for illegal drugs, has failed to successfully complete services, and has failed to maintain suitable housing. The findings support the juvenile court's conclusion that the remedies that resulting in Child's removal from Parents' care are not likely to be remedied. In addition, Father does not challenge the findings or conclusions indicating that termination of Father's parental rights was in Child's best interests, that Child had been removed from his care for more than the statutorily-mandated amount of time, or that DCS provided a sufficient plan for Child's future care. In challenging the juvenile court's order, Father merely points to evidence which he claims demonstrated that he had obtained stable housing and was making progress at the time of the evidentiary hearing. Given the juvenile court's unchallenged findings, we conclude that the evidence is sufficient to support the 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.

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

Bailey, J., and Vaidik, J., concur.