MEMORANDUM DECISION

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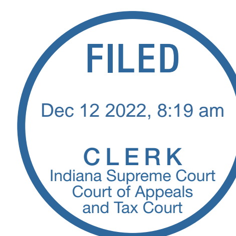

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary Termination of the Parent-Child Relationship of N.R. and M.R. (Minor Children)

and

D.R. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

December 12, 2022

Court of Appeals Case No. 22A-JT-165

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester, Judge

Trial Court Cause Nos. 48C02-2108-JT-140, - 41

Crone, Judge.

Case Summary

[1] D.R. (Father) appeals an order involuntarily terminating his parental rights to his children, N.R. and M.R. Father contends that the trial court made improper findings and conclusions and that the remaining findings and evidence fail to support termination. Finding no reversible error, we affirm.

Facts and Procedural History

[2] C.C. (Mother)[1] gave birth to N.R. in October 2015 and gave birth to M.R. in August 2018. At the beginning of July 2019, the maternal grandmother retrieved the children from Father's sole care and discovered three-year-old N.R. and ten-month-old M.R. covered in bruises. The grandmother contacted authorities in Madison County. Police and the local office of the Indiana Department of Child Services (DCS) responded, took photographs, and conducted interviews. At first, Father stated that N.R.'s injuries resulted from a fall at a splash park and that N.R. caused M.R.'s bruises.[2] A different witness contradicted Father's explanation, and N.R. stated that Father hit him. Father then admitted he spanked N.R. with a belt.

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[1] Mother was incarcerated when the grandmother observed the bruises on the children and does not participate in this appeal.

[2] N.R. had a red mark by his left eye, several bruises on his back, and linear bruising on his bottom, plus bruises to his shoulder, ear, and face. M.R. had bruising to his back and both cheeks as well as scrapes on his legs and back.

[3] Authorities immediately removed N.R. and M.R. from the home and temporarily placed them in relative care. On July 3, 2019, Father was arrested and charged with two counts of battery resulting in bodily injury to a person under age fourteen and two counts of neglect of a dependent resulting in bodily injury. Ex. Vol. at 68. DCS filed petitions alleging N.R. and M.R. to be children in need of services (CHINS). By August 2019, both N.R. and M.R. were adjudicated CHINS and placed in a foster home. In September 2019, the court held a dispositional hearing and ordered counseling and continued placement in foster care for the children, as well as services for Father and Mother, with the goal of reunification.

[4] In October 2019, Father pled guilty to all four charges as level 5 felonies. The court vacated the two neglect charges, sentenced him to consecutive three-year sentences, and suspended 545 days of each sentence to probation — the net result being three years of incarceration followed by three years of probation. One of the conditions of probation required that Father have no contact with N.R. and M.R.

[5] By summer 2021, Father and Mother had made little to no progress toward reunification with the children, and N.R. and M.R. continued to thrive with the original foster family. Thus, DCS requested, and the court ordered, that adoption be added as a concurrent permanency plan. In August 2021, DCS filed a petition to involuntarily terminate the parent-child relationships. In September 2021, Father sent the court a letter requesting a delay of the

termination proceedings until his release so that he could have an opportunity to participate in services. Appellant's App. Vol. 2 at 25.

[6] In December 2021, the court held a termination hearing at which DCS offered, inter alia, records of Father's previous criminal cases. The records, which the judge admitted, included a November 2016 guilty plea to domestic battery for conduct against Mother that occurred in October 2016. Although the plea agreement required Father to complete domestic violence counseling, by December 2016, Father was charged with a new incident of domestic battery and invasion of privacy. He pled guilty to the latter for violating a court order prohibiting contact with Mother. Father testified at the termination hearing that he had problems controlling his anger, that he used methamphetamine for approximately three and one half or four years prior to incarceration, and that he "beat the children black and blue[.]" Tr. Vol. 2 at 31-33. Father completed one parenting class but no substance abuse or anger management classes while incarcerated. The DCS family case manager testified that she attempted to arrange monthly phone calls with Father while he was incarcerated, but only once did they connect via phone. Father did not contact DCS or inquire about the children or their placement.

[7] The court appointed special advocate testified that neither N.R. nor M.R. spoke of Father to her and that they are "thriving" with and "very bonded" to the foster family. *Id*. at 39-40. The foster mother testified that N.R. arrived with some aggressive behaviors, received therapy, and has improved. When asked whether either child talks about Father, the foster mother stated that N.R. says

"he's not a very nice person … he hurt him a lot," and N.R. is "happy that he's not around [Father]." *Id*. at 67. She noted that N.R. refers to Father by his first name rather than as "dad." *Id*. The foster mother stated that she, her husband, and their fifteen-year-old son share their two-story house with N.R. and M.R. Each child has his own bedroom, plus the house has two and a half bathrooms, room to play inside, and a fenced yard. The foster family planned to adopt both children if termination occurred.

[8] In January 2022, the court issued a seven-page order[3] granting DCS's petition for termination of parental rights.

Discussion and Decision

Section 1 – Father has not demonstrated that certain findings constitute reversible error.

[9] In challenging the trial court's decision terminating his parental relationship with N.R. and M.R., Father takes aim at four of the sixty-six findings. When reviewing a trial court's findings of fact and conclusions thereon in a case involving the termination of parental rights, we first determine whether the evidence supports the findings and then whether the findings support the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In deference to the trial

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[3] Father claims that the court "signed [DCS's] proposed findings verbatim." Appellant's Br. at 6. The appellant's appendix is missing one of the pages of the DCS proposed findings, thus we cannot determine with certainty whether that is the case. Regardless, a trial court's verbatim adoption of a party's proposed findings, while not encouraged, is not prohibited, and does not change our standard of review. *See Country Contractors, Inc. v. A Westside Storage of Indianapolis, Inc.*, 4 N.E.3d 677, 694 (Ind. Ct. App. 2014).

court's unique position to assess the evidence, we will set aside the trial court's judgment only if it is clearly erroneous. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *In re A.G.*, 45 N.E.3d 471, 476 (Ind. Ct. App. 2015), *trans. denied* (2016). Unchallenged findings stand as proven. *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*. In conducting our review, we neither reweigh evidence nor judge witness credibility. *E.M.*, 4 N.E.3d at 642. Rather, we consider only the evidence and inferences most favorable to the judgment. *Id.* "[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal." *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[10] We review findings 6, 14, 59, and 60 in turn. Appealed Order at 2, 4. Finding 6 states: "Father presented no evidence that he made any attempts to engage in services while he was at liberty before arrest in the criminal case pertaining to the boys." On appeal, Father points to documentary evidence indicating that he was arrested and held beginning on July 3, 2019, the same time that DCS became involved with his children. Thus, he claims he was never at liberty to engage in services. However, finding 6 is supported by Father's *own testimony* that he was incarcerated "about a month" after DCS became involved. Tr. Vol. 2 at 25. Indeed, his testimony was reflected in finding number 5, which Father does not challenge. To the extent Father invites us to reverse due to his own

erroneous testimony upon which the trial court *might* have relied, we decline. Moreover, finding 6 could be referring to Father presenting no evidence that he engaged in services after his domestic violence and invasion of privacy convictions but before he battered his children in July 2019. Indeed, the court found, and Father does not challenge, that his "repeated interactions with the criminal courts has not led to remediation of Father's difficulties with domestic violence and anger." Appealed Order at 2 (finding 18). Regardless, even if we conclude that finding 6 is clearly erroneous and should be disregarded, we outline in Section 2 how Father has not demonstrated that the termination order was improper.

[11] Finding 14 states: "While Father's ability to participate in services has been limited somewhat by the current COVID crisis, Father was incarcerated prior to the [crisis] and did not avail himself of available services during that time period." *Id*. Father claims that on March 6, 2020, "the governor declared a public health emergency relating to the covid outbreak. On November 13, 2019 President Trump declared a national emergency due to the virus." Appellant's Br. at 8. While we do not disagree that stay-at-home orders were issued, deadlines were tolled, and proceedings were suspended during the pandemic, exceptions existed, and these emergency measures began in March 2020, not November 2019. Because Father pled guilty in October 2019, the pandemic did not preclude him from enrolling in self-improvement programs at the beginning of his incarceration. The fact that he completed a parenting class demonstrates that programming existed. The trial court was not required to believe Father's

self-serving testimony that other programming was not available, especially when the DCS case manager testified that she had other clients in correctional facilities that were "still able to do services up until early 2020." Tr. Vol. 2 at 57.[4]

[12] Finding 59 states: "The Court finds that Father had opportunity to begin to engage in services after the children's detention but failed to do so." Appealed Order at 4. As with finding 6, Father's own testimony supports finding 59 but conflicts with documentary evidence. Without repeating the identical rationale that we set out above regarding finding 6, we note that even if we disregard finding 59, Father has not demonstrated that the termination order was improper. *See In re A.S.*, 17 N.E.3d 994, 1003-06 (Ind. Ct. App. 2014) (concluding that despite three clearly erroneous findings, DCS presented sufficient evidence to support termination).

[13] Finally, Father challenges finding 60, which he claims "held that DSC [sic] could have stopped services for [Father] any time after he was arrested." Appellant's Br. at 8. Father misunderstands finding 60, which actually states: "The Court notes that the CHINS court could have ordered a cessation of services for Father at any time based on the charges filed and, after conviction,

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[4] In his appellate brief, Father cites an undated announcement from the Indiana Department of Correction regarding delays in addiction treatment. Appellant's Br. at 14. This post does not appear to have been offered at the termination hearing, and the announcement that "[e]very effort will be made to offer some form of addiction treatment to offenders, regardless of the restrictions and limitations" cuts against Father's testimony that treatment programs were not offered.

the conviction entered." Appealed Order at 4. Finding 60 seems to stem from finding 71, which states:

> Reasonable efforts to reunify a child with the child's parent are not required if the court finds that the parent of the child has been convicted of battery … as a Level 5 Felony for a crime committed after June 20, 2014 against a child who is the individual's biological or adoptive child.

Appealed Order at 5. Father does not challenge finding 71, which tracks Indiana Code Section 31-34-21-5.6(b)(3)(C). Within that statute, our legislature determined that reunification efforts are not required in a situation where, as here, a parent has been convicted of battery against his child. Thus, the court's statement in finding 60, rather than being clearly erroneous, is a correct statement of the law.

Section 2 – DCS presented sufficient evidence to support termination of parental rights.

[14] Father asserts that the findings and evidence fail to support the termination of his parental rights. Specifically, he disputes finding 64 and the related conclusion 2, in which the court found a reasonable probability that the conditions that resulted in the children's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the children.

[15] "Parents have a fundamental right to raise their children – but this right is not absolute. When parents are unwilling to meet their parental responsibilities,

their parental rights may be terminated." *In re Matter of Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). A petition to terminate a parent-child relationship requires proof of four elements,[5] the second of which requires a showing:

> 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) (emphasis added). DCS must prove the elements by "clear and convincing evidence." *In re R.S.*, 56 N.E.3d 625, 629 (Ind. 2016). DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[16] Father argues that DCS should have done more for him and that he "should be given a final opportunity to show that he can be a proper parent[.]" Appellant's

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[5] Father does not challenge the findings regarding the other three elements required for termination.

Br. at 6. Additionally, he contends that the CHINS "recommendations are not tailored to the exi[s]ting situation but rather are nothing more than a macro of things that appear to be imposed in essentially every case regardless of facts." *Id*. at 10. Moreover, he takes issue with what he terms the "failure of [DCS] to provide services[,]" which he claims "created the risk of premature and incorrect termination of his parental rights." *Id*. at 11.

[17] Preliminarily, we observe that if Father wished to challenge the propriety of the CHINS parental participation plan for an incarcerated person, he should have done so when the September 2019 dispositional order was issued, not now under the guise of an appeal of a termination. As for Father's assertion that DCS failed to offer services, we agree that, generally, DCS is required to make reasonable efforts to preserve and reunify families during CHINS proceedings. Ind. Code § 31-34-21-5.5. However, reunification efforts are not required in situations where a parent has been convicted of level 5 felony battery. *See* Ind. Code § 31-34-21-5.6(b)(3)(C). Given that the September 2019 dispositional order was signed prior to Father's October 2019 guilty plea to battering his sons, it is not surprising that the dispositional order did not contain a finding that reunification services need not be provided. Indiana Code Section 31-34-21-5.6(b)(3)(C) does not apply until a conviction is entered. Regardless, the CHINS provision requiring services "is not a requisite element of our parental rights termination statute[.]" *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). And, failing to provide services "does not serve as a basis on which to

directly attack a *termination* order as contrary to law." *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000) (emphasis added).

[18] In a related argument, Father contends that incarceration is not a sufficient basis for termination of parental rights. For support, Father cites *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641 (Ind. 2015), which we find readily distinguishable. In *K.E.*, our supreme court reiterated that incarceration by itself is an insufficient basis for terminating parental rights and outlined various actions undertaken by a father, which justified reversal of the termination order. The father in *K.E.* was incarcerated due to drug charges, not battery of his own children. Additionally, the father in *K.E.* completed more than twelve voluntary self-improvement programs during his incarceration and, through visitation and nightly phone calls, had developed a bond with his children. He also had a solid plan upon release for employment and residence with family. Here, Father completed one class, could not have contact with the children, and did not routinely inquire about them. M.R. did not have a bond with Father, and N.R.'s perspective of Father was negative. Father claimed he would live with a friend upon release, but no independent evidence confirmed his claim.

[19] Citing *In re A.S.*, 100 N.E.3d 723, 727-20 (Ind. Ct. App. 2018), Father briefly argues that the trial court should have delayed its termination ruling because he was on the verge of release. We find *A.S.* distinguishable because the father in *A.S.* filed a continuance, was not incarcerated due to physically injuring his child, was enrolled in a program that would favorably change his incarceration

status, and had a strong bond with his daughter. None of these factors exist in Father's case.

[20] Here, the record shows that Father pled guilty to domestic battery in 2016, was ordered to complete domestic violence counseling, yet within a few months was charged with a new incident of domestic battery and invasion of privacy. Both incidents involved Mother, and the latter occurred when Father disregarded a no-contact order. Then, the 2019 battery and neglect arrest occurred. Father's own testimony at the termination hearing revealed that he had problems controlling his anger, that he used methamphetamine for approximately three and one half or four years prior to incarceration, and that he beat his children. Father completed one parenting class but no substance abuse or anger management classes while incarcerated. Other than one call, Father did not contact DCS and inquire about the children or their placement.

[21] In the meantime, N.R. and M.R. are thriving with and very bonded to the foster family. That same foster family has taken care of them since August 2019, has coordinated therapy for N.R. to address aggressive behaviors, and wishes to adopt both young brothers. When asked about Father, N.R. refers to him by his first name, describes him in negative terms, recalls Father "hurts him a lot," and expresses happiness that Father is not around. As for M.R, he does not speak of Father.

[22] N.R. was three years old and M.R. was ten months old when Father was arrested for battering them. Even if, upon release, Father would seek substance

abuse treatment, anger management, and other programming, his terms of probation require no contact with N.R. and M.R. for three years. By the conclusion of Father's term of incarceration and probation, then-nine-year-old N.R. and then-six-year-old M.R. will have had no contact with him for almost six years. We cannot make children "wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648. Further, "children have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships." *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[23] Under these particular circumstances, there was sufficient evidence to demonstrate a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of N.R. and M.R. Because only one of the subparagraphs within 31-35-2-4(b)(2)(B) must be proved by clear and convincing evidence, we need not review whether sufficient evidence supports the finding that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied. Father has not demonstrated that the trial court's termination decision was clearly erroneous.

[24] Affirmed.

May, J., and Weissmann, J., concur.