

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of Parent-
Child Relationship of:

Z.D. (Minor Child),

and

Q.S. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

October 18, 2023

Court of Appeals Case No.
23A-JT-539

Appeal from the Delaware Circuit
Court

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause No.
18C02-2212-JT-000040

Memorandum Decision by Judge Felix
Judges Crone and Brown concur.

Felix, Judge.

Statement of the Case

[1] Q.S. (“Father”) appeals the involuntary termination of his parental rights to his child, Z.D. (“Child”). Father presents one issue on appeal, which we restate as follows: Whether the trial court’s decision to terminate Father’s parental rights was clearly erroneous.

[2] We affirm.

Facts and Procedural History

[3] S.D. (“Mother”) gave birth to the Child on May 1, 2019. Father never lived with the Child, and Mother was the primary caregiver.

[4] On October 26, 2020, DCS found Mother and the Child squatting in an uninhabitable apartment without working utilities. Mother agreed to a safety plan with DCS, which included finding acceptable living conditions and not going back to the apartment where they were squatting. On November 10, 2020, DCS found Mother and the Child in the apartment where they had been squatting, and Mother was arrested for child neglect. DCS filed a petition alleging the Child was a child in need of services (“CHINS”) the same day.

- [5] On March 12, 2021, the Child was deemed a CHINS and placed in foster care. On November 18, 2022, DCS filed a petition to terminate Father’s parental rights.¹ On February 9, 2023, the trial court held a TPR factfinding hearing.
- [6] Following the CHINS determination, Father was mostly absent from the Child’s life because he was in and out of jail. While Father was not incarcerated, he would only visit the Child intermittently and for short periods of time.
- [7] Father failed to actively communicate with DCS and participate in the permanency process. He failed to provide DCS with adequate contact information, avoided DCS-ordered drug screens and home-based casework, and missed permanency hearings. Father only attended hearings when he was incarcerated and summoned by court order.
- [8] Meanwhile, the Child was thriving in foster care. At the time of the TPR factfinding hearing, the Child had been with the same foster mother (“Foster Mother”) for 18 months. Foster Mother was able to provide food, housing, and a consistent lifestyle for the Child. Further, Foster Mother was willing and prepared to adopt the Child.

¹ In July of 2022, DCS petitioned to terminate the parental rights of both parents in favor of a plan for the Child to be adopted. However, due to Mother’s progress, DCS created a new permanency plan for the Child, which included reunification with Mother. Unfortunately, Mother died of a drug overdose on November 17, 2022. The following day, DCS changed the Child’s permanency plan to adoption.

[9] At the TPR factfinding hearing, Father provided little certainty towards his ability to care and provide for the Child. Father could not give a permanent address and stated that he had often been “place to place” or homeless during the Child’s life. Tr. Vol. II pp. 18–19. He also told the court that he has “never had a job” but claimed to be able to earn enough to provide for the Child. *Id.* at 40. Ultimately, Father admitted he did not have a place for the Child to stay if he were to gain custody, but he proposed the Child could possibly stay with his mother (“Grandmother”). DCS was against this plan because they had recently intervened and taken children out of Grandmother’s home a month prior to the hearing.

[10] On February 28, 2022, the trial court granted the DCS petition to terminate Father’s parental rights over the Child. Father now appeals.

Discussion and Decision

[11] In a TPR appeal, “[w]e affirm a trial court’s termination decision unless it is clearly erroneous; a termination decision is clearly erroneous when the court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision.” *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (citing *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014)), *cert. denied*. This Court will not “reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment.” *Id.* (citing *In re K.E.*, 39 N.E.3d 641, 646 (Ind. 2015)).

[12] The interest of a parent in raising his or her child is a longstanding fundamental right, but “parental interests are not absolute.” *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013) (citing *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009)). The State can file a TPR petition “when the parents are unable or unwilling to meet their parental responsibilities.” *K.T.K.*, 989 N.E.2d at 1230 (quoting *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010)).

[13] When the State files a TPR petition, the petition must allege:

(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 local office 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). “To terminate parental rights, Indiana law requires DCS to prove [these] elements by clear and convincing evidence.” *Ma.H.*, 134 N.E.3d at 46 (citing I.C. § 31-35-2-4(b)(2)).

[14] Father argues that the State has not met its burden in proving two elements of its petition.² Specifically, we will address Father’s contentions that the State failed to provide evidence to conclude: (1) the conditions or reasons that led to the Child’s placement outside the home will not be remedied; and (2) termination would be in the best interests of the Child.

² I.C. § 31-35-2-4(b)(2)(B) requires the State to prove only one of the three conclusions listed. The trial court found that there is a reasonable probability that: (1) “the conditions that resulted in the Child's removal or the continued placement outside the home will not be remedied by Father”; (2) “continuation of the parent-child relationship poses a threat to the Child's wellbeing.” Appellant’s App. at 36. Since “we determine that the court’s findings support its conclusion on the former, we need not address the latter.” *Ma.H.*, 134 N.E. at n.2 (citing *K. T.K.* 989 N.E.2d at 1234).

I. The conditions that led to the Child being taken out of the home were unlikely to change.

- [15] To determine whether the conditions or reasons which led to the Child’s placement outside the home will be remedied, we must conduct a two-step analysis. *K.T.K.*, 989 N.E.2d at 1231. “First, we must ascertain what conditions led to their placement and retention in foster care. Second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *I.A.*, 934 N.E.2d at 1134).
- [16] The Child was taken into foster care and deemed a CHINS because Mother showed an inability to provide habitable living conditions. On October 26, 2020, DCS initially became involved because Mother was squatting in an apartment with no utilities. The living situation was deemed uninhabitable by police. Mother agreed to a safety plan and told DCS she would not return to this apartment.
- [17] A few weeks later, the Child and Mother were again found in the apartment where they had been squatting. Mother was arrested for child neglect, and the Child was left without a caregiver. At the time, Father could not be found and was “allegedly homeless and/or lack[ed] stable housing.” Ex. Vol. I p. 28.
- [18] The evidence supports a finding that conditions would not change. Throughout the Child’s life, Father has “either been incarcerated or couch surfing,” Tr. Vol. II p. 35, and he had “never had a job before,” *Id.* at 40. Looking forward, Father told the court he did not have a place for the Child to stay if he were able

to get out of jail and gain custody. Father suggested that the Child could live with Grandmother if he were to gain custody. However, Father could not remember the last time he talked to Grandmother, and he was unaware that DCS had recently removed children from her home.

[19] Mother had been the Child's primary caregiver before the Child went into foster care. Since Mother's death, Father has not shown any change in his circumstances or ability to provide a habitable, functional living situation for the Child. Therefore, the evidence supports the trial court's conclusion that there was a reasonable probability these conditions would not be remedied.

II. The evidence supports the trial court's conclusion that termination was in the Child's best interest.

[20] Finding the best interests of the child is "perhaps the most difficult determination" in a TPR case because the interests of the child often conflict with the interest of family preservation. *E.M.*, 4 N.E.3d at 647. To make this determination, the trial court must "look at the totality of the evidence" and value the interests of the child over those of the parent. *Ma.H.*, 134 N.E.3d at 49 (citing *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013)).

[21] Although there are known benefits to keeping a child with his or her father, *E.M.*, 4 N.E.3d at 647–48, permanency for the child is a substantial interest to consider, *Ma.H.*, 134 N.E.3d at 49 (citing *G.Y.*, 904 N.E.2d at 1265). The trial court cannot give a parent unlimited time or opportunities to complete the steps to rectify or preserve the parent-child relationship. *See id.* In some cases, a

prolonged absence from the child's life outweighs parental efforts which are "entirely genuine and demonstrate significant progress." *E.M.*, 4 N.E.3d at 649.

- [22] The evidence showed that termination of Father's rights provided permanency and stability in the Child's life. At the time of the hearing, the Child had been with the same foster family for 18 months with adoption as the proposed permanency plan. Father's testimony showed he could not provide this kind of consistency for the Child. There was no certainty or stability shown for Father's ability to avoid incarceration, supply housing, or obtain employment.
- [23] Father was rarely in the Child's life. He never independently reached out to DCS about proceedings nor did he update them with contact information to ensure he would be made aware of any developments in the Child's case. In fact, Father only attended DCS hearings while incarcerated and by court order. Further, in early 2022, a time when Father was not incarcerated, and while the Child stayed with Mother, Father only managed to visit the Child "a few times" with some visits lasting only "a few minutes." Tr. Vol. II p. 47, 51.
- [24] In contrast, Foster Mother demonstrated a commitment to the Child's well-being. Foster Mother was invested in the Child's life for a year and a half, provided the Child a stable home, and was prepared to care for the Child until the Child was 18. Therefore, the evidence supports the conclusion that termination was in the best interests of the Child.

III. Father provided no argument against the findings.

- [25] Father does not challenge any of the trial court’s specific findings of fact. Rather, Father only challenged the trial court’s conclusions from those findings. Since Father did not challenge any findings, we accept them as proven. *R.M. v. Indiana Department of Child Services*, 203 N.E.3d 559, 564 (Ind. Ct. App. 2023) (citing *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992)).
- [26] Father recognizes that we will not reweigh the evidence in reaching a decision but that is what he asks us to do. In challenging the conclusion that conditions are unlikely to change, we are asked to consider Father’s plans to look for employment and housing as well his release from incarceration in the “near future.” Appellant’s Br. p. 11. Further, these attempts to improve his circumstances are also cited for why custody with Father would be in the best interests of the Child. Since “we consider only the evidence and reasonable inferences that support the court’s judgment,” we cannot entertain this evidence nor its accompanying arguments. *Ma.H.*, 134 N.E.3d at 41. Absent any challenges to specific findings, we find the evidence produced at trial supports the trial court’s conclusions.

Conclusion

- [27] Since “the evidence favorable to the trial court’s decision supports its factual findings, which in turn support its challenged legal conclusions,” the trial court’s termination order was not clearly erroneous. *Ma.H.*, 134 N.E.3d at 46.
- [28] Affirmed.

Crone, J., and Brown, J., concur.