

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of:

B.A., Ca.A., and O.A. (Minor Children),

and

C.A. (Father)

Appellant-Respondent

v.

Indiana Department of Child Services,

Appellee-Petitioner

May 1, 2024

Court of Appeals Case No.
23A-JT-2762

Appeal from the Madison Circuit Court
The Honorable Stephen J. Koester, Judge
Trial Court Cause Nos.
48C02-2307-JT-172

Memorandum Decision by Judge Bailey
Judges Pyle and Crone concur.

Bailey, Judge

Case Summary

- [1] C.A. (“Father”) appeals¹ the trial court judgment terminating his parental rights to his three children, B.A., born January 17, 2017, O.A., born November 11, 2018, and Ca.A., born March 17, 2020 (collectively, “the Children”). The sole restated issue is whether the termination of Father’s parental rights was clearly erroneous. We affirm.

Facts and Procedural History

- [2] On December 29, 2021, the Indiana Department of Child Services (“DCS”) filed three separate petitions, one for each child, alleging that the Children were Children in Need of Services (“CHINS”) because: Mother had abandoned them and her whereabouts were unknown; there was a no contact order in

¹ R.L.’s (“Mother”) whereabouts are unknown, and she does not participate in this appeal.

place prohibiting Father from contact with Mother and the Children due to Father's past domestic violence against Mother in the Children's presence; the two youngest children were, nevertheless, being left in Father's care; and Father had failed to obtain adequate medical treatment for Ca.A. DCS removed the Children from Father's home on an emergency basis on January 5, 2022.

- [3] On April 4, 2022, following Father's admission, the trial court adjudicated the Children to be CHINS and entered a dispositional order that Father engage in reunification services. The order required Father, among other things, to: complete substance abuse and parenting assessments and follow all recommendations; complete a psychological assessment; complete random drug screens; maintain weekly contact with DCS; maintain suitable housing and a legal and stable source of income; not use, manufacture, or consume illegal substances; and obey the law.
- [4] Father failed to comply with portions of the dispositional order, including failing to complete a substance abuse assessment, maintain weekly contact with DCS, and obey the law. Father was closed out of some services due to his non-compliance. On March 31, 2022, Father submitted a drug screen to DCS that was positive for methamphetamine and THC. Father failed to attend about half of the periodic, review, and modification hearings in the CHINS and subsequent Termination of Parental Rights ("TPR") actions. Father participated in criminal activity and was in and out of jail during the CHINS and TPR cases. He was released from jail to work release and a restricted living setting on July 17, 2023.

- [5] Father's no-contact order as to Mother and the Children was lifted in March 2022, but DCS did not refer Father to visitation at that time because it required Father to be engaged in "three months of solid services" first as the Children "hadn't seen [Father] in such a long time [that] it would [have been] traumatic to just jump into visitation." Tr. at 60. Father did not consistently engage in three months of the services ordered.
- [6] On July 28, 2023, DCS filed petitions to terminate Father's parental rights as to the Children. By the time of the August 30 CHINS review and TPR initial hearings, Father was not engaged in any services.
- [7] The final TPR factfinding hearing was on October 10, 2023. At the hearing, Father admitted the Children could not live with him at that time because he was in the work release program. Father had begun participating in some services, such as home-based casework, shortly before the final TPR hearing. He was also participating in some random drug screens through work release, but he had failed to call in for screening on 235 occasions, and he had only completed two drug screens. Father testified that he rented a house and that he was employed, but he did not provide DCS or the court with any documentation confirming his housing or income. Father has a criminal history which includes possession of illegal drug convictions from both before and after the Children were born. At the time of the final TPR factfinding hearing, Father had pending drug-related criminal charges.

[8] At the time of the final TPR hearing, the Children were in two separate foster homes, but the foster families ensured that the Children visited with each other. B.A., who was in a foster home by herself, had spent a significant amount of time with her foster family even before her removal because that family had served as her placement during three prior removals and because Mother “unofficially” dropped her off with this family on many occasions without DCS’s involvement. Tr. at 86. Despite “struggl[ing] with emotions and some behaviors,” B.A. was doing well in her foster placement. *Id.* at 103. B.A. was in first grade, was doing well in school, was receiving therapy, and was involved with gymnastics and the Girl Scouts. B.A. had not seen Father since the summer of 2020, and became upset whenever she was asked to discuss her parents. B.A. thought of her foster family as her family, and her foster family wished to adopt B.A.

[9] O.A. and Ca.A. lived together with a foster mother. Although they had had prior placements, they thought of their foster mother as their family. They were both in therapy and had not seen Father since they were removed from his care on January 5, 2022. The two youngest children were doing well in their foster placement, but four-year-old O.A. had some “behaviors” at school and became emotional when he had to leave his foster mother to go to school. *Id.* at 109. At the time of the final TPR hearing it was not clear whether O.A.’s and Ca.A.’s foster mother would be able to adopt them; however, DCS’s permanency plan for them was to be adopted together by the same family.

[10] Family Case Manager (“FCM”) Andrea Estar testified that she would have concerns about returning the Children to Father’s care because the Children could not live with Father since he was on work release, and Father was not a “safe[,] stable parent.” Tr. at 47. FCM Estar supported termination and adoption by the Children’s placements and emphasized the need for stability. Court-Appointed Special Advocate (“CASA”)² Katrina Childers also recommended termination and adoption because the Children’s parents were inconsistent with services, the Children had not seen their parents for approximately two years, and the parents could not “successfully and safely parent the [C]hildren now or in the near future.” Appealed Order at 4. CASA Childers opined that the Children would not be able to reunite with Father, in part because they had no bond with him.

[11] On November 2, 2023, the trial court issued its order involuntarily terminating Father’s parental rights. The court issued extensive findings, which included findings that Father’s testimony was self-serving and/or not credible regarding the following subjects: his alleged suitable housing and stable income; his testimony that he was soon to be released from the work release setting; and his assertion that he last used Methamphetamine in 2020. The trial court noted a lack of independent evidence and/or documentation to support Father’s self-serving testimony. In addition, the trial court placed “minimal weight” on the testimony of Brandi Rollins, Father’s significant other, in support of Father

² At some points, CASA Childers also referred to herself as a Guardian Ad Litem.

because Rollins had “little direct knowledge of the case.” Appealed Order at 5. The court concluded that there was a reasonable probability that the conditions that resulted in the Children’s removal and retention in foster care would not be remedied, that the continuation of the parent-child relationship would pose a threat to the Children’s wellbeing, that termination was in the Children’s best interests, and that there was a satisfactory plan for the Children’s care and treatment. This appeal ensued.

Discussion and Decision

Standard of Review

[12] Father maintains that the trial court’s order terminating his parental rights is clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of a parent to establish a home and raise his or her children is protected by the Fourteenth Amendment of the United States Constitution. *See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[13] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(A) that one (1) of the following is true:

* * *

(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) [and] that termination is in the best interests of the child

I.C. § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (b)(2)(B) before the trial court may terminate parental rights. *Id.* DCS's "burden of proof in termination of parental rights cases is one of 'clear

and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[14] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[15] Here, in terminating Father’s parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

Challenge to Findings

- [16] Father challenges the sufficiency of the evidence to support some of the findings. Finding 20 notes that the court did not “find credible his bald self-serving assertions” that he had complied with court-ordered services, which were “unsupported by independent evidence from an unbiased source.” Appealed Order at 3. Father points to the supportive testimony of Rollins, his significant other. However, the trial court specifically stated that it gave Rollins’s testimony only minimal weight because she was unfamiliar with the CHINS and TPR cases. A “factfinder is obliged to determine not only whom to believe, but also what portions of conflicting testimony to believe, ... and is not required to believe a witness’ testimony even when it is uncontradicted.” *Wood v. State*, 999 N.E.2d 1954, 1064 (Ind. Ct. App. 2013) (citations omitted), *trans. denied*. Finding 20 was well within the trial court’s discretion, and we may not reweigh the evidence supporting that finding, as Father suggests. *See In re D.D.*, 804 N.E.2d at 265.
- [17] Similarly, in Findings 23 and 24, the trial court found that Father’s self-serving statement that he would “soon” be released from the work release setting was unsupported by any other evidence. Father’s only assertion regarding these findings asks us to reweigh the evidence and judge witness credibility, which we may not do. *Id.*
- [18] Finally, Father challenges Finding 32, which found that Father’s “truthfulness” about not having used methamphetamine since 2020 was “belied” by his

positive drug screen for methamphetamine on March 31, 2022, his 2022 conviction for possession of methamphetamine, and his pending criminal charges of possession of methamphetamine. Appealed Order at 3. Father notes that the March 31, 2022, drug screen contained a footnote stating, “Confirmation of a positive screen is recommended if legal action is anticipated” and no such confirmation was made. Ex. at 195. He also notes that drug “possession does not equate to use.” Appellant’s Br. at 10. However, both of those arguments go to the weight of the evidence, and it is up to the fact-finder alone to decide what weight should be given. *See In re D.D.*, 804 N.E.2d at 265.

[19] The challenged findings are supported by the evidence.

Conditions that Resulted in Removal/Continued Placement

[20] Father challenges the trial court’s ultimate finding that there is a reasonable probability that the conditions that resulted in the Children’s removal and continued placement outside the home likely will not be remedied. When addressing that issue, we must determine whether the evidence most favorable to the judgment supports the trial court’s determination. *Id.*; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). “First, we identify the conditions that led to removal; and second, we determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* (quotations and citations omitted).

[21] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent’s fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643. The court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Moore v. Jasper Cnty. Dep’t of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the “trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship”). In evaluating the parent’s habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent’s prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Moore*, 894 N.E.2d at 226.

[22] Here, the Children were removed from Father’s care and custody because there was a protective order in place preventing Father from contact with the Children because he had engaged in domestic violence against Mother in their presence. In addition, the Children were removed because Father had failed to provide Ca.A. with medical care. At the time of the termination hearing,

Father had failed to keep in contact with DCS as ordered; had failed to substantially engage in any of the services in which he had been ordered to engage; had failed to visit with the Children; had failed to attend about half of the court proceedings for the CHINS and TPR cases; had failed to consistently engage in drug screening; had failed to follow the law as shown by his criminal convictions in 2022 and 2023; and had pending criminal charges.³ Moreover, Father was unable to provide for the Children at the time of the hearing because he was living in a work release setting that could not accommodate children. All of that evidence provides ample support for the court's ultimate finding that Father is not likely to remedy the reasons for the Children's removal and continued placement outside his home.⁴ *See Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted) (noting evidence of a parent's pattern of unwillingness or lack of commitment to addressing parenting issues and cooperating with services supports a finding that there exists no reasonable probability that the conditions will change), *trans. denied*. Father's arguments to the contrary are only requests that we reweigh the evidence, which we cannot do. *See, e.g., In re D.D.*, 804 N.E.2d at 265.

³ Father refers to cases stating that certain factors, *alone*, are not sufficient to show a reasonable probability that a parent will not remedy the conditions that led to removal. Appellant's Br. at 13-17. However, given the evidence of the multiple ways in which Father failed to take steps likely to remedy the conditions that led to the Children's removal and continued placement outside of his home, those cases are not applicable.

⁴ Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we do not address the trial court's ultimate finding that Father also posed a threat to the Children's well-being.

Best Interests of the Children⁵

- [23] In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). “A parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child’s best interests.” *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), *trans. denied*. “Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child’s best interests.” *In re A.K.*, 924 N.E.2d at 224. Such evidence, “in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests.” *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.
- [24] The evidence most favorable to the judgment shows that, throughout the CHINS and TPR proceedings, Father failed to complete services that were designed to improve his parenting skills, such as a parenting assessment and home-based services. Father also failed to provide random drug screens, as

⁵ Father does not state under which subsections of Indiana Code Section 31-25-2-4(b)(2) he challenges the trial court’s decision. However, because the trial court and DCS address the best interests subsection of the statute, we too will address it.

ordered, to show that he was no longer using illegal drugs. Father also continued to engage in drug-related criminal activity while the CHINS and TPR actions were pending, and, at the time of the termination hearing, was unable to provide care for the Children because he was in a restricted work release setting. Furthermore, due at least in part to his on-going criminal activity, Father had not visited with the Children during the pendency of the entire CHINS and TPR proceedings.

[25] Moreover, the FCM and CASA testified that termination of Father's parental rights is in the Children's best interests due to Father's lack of stability, effort, and progress over the course of the CHINS and TPR proceedings. Given that testimony, in addition to evidence that the Children need permanency and stability that Father cannot provide and that the reasons for Children's removal from Father will not likely be remedied, we hold that the totality of the evidence supports the trial court's determination that termination is in the Children's best interests. *In re A.D.S.*, 987 N.E.2d at 1158-59.

Conclusion

[26] The evidence in the record supports the trial court's findings of fact, and those findings support the trial court's judgment terminating Father's parental rights. The trial court did not clearly err.

[27] Affirmed.

Crone, J., and Pyle, J., concur.

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