

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of A.P. and B.P.
(Minor Children), and
B.T. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

April 5, 2022

Court of Appeals Case No.
21A-JT-2492

Appeal from the Monroe Circuit
Court

The Honorable Holly M. Harvey,
Judge

Trial Court Cause Nos.
53C06-2106-JT-304, - 305

Crone, Judge.

Case Summary

- [1] B.T. (Father) appeals the involuntary termination of his parental rights to his minor children A.P. and B.P. (the Children). We affirm.

Facts and Procedural History

- [2] Father and B.M.P. (Mother)¹ are the parents of two minor children, A.P., born on October 27, 2019, and B.P., born on September 5, 2020. The Indiana Department of Child Services (DCS) first became involved with the family in May of 2020 due to allegations of abuse and/or neglect regarding A.P. DCS filed a petition alleging that A.P. was a child in need of services (CHINS) due to unsafe home conditions, bug infestation in the home, methamphetamine use in the home, and the failure of both parents to provide necessary care for A.P. A.P. was removed from the home on an emergency basis on May 25, 2020. Following a CHINS factfinding hearing on August 28, 2020, the trial court found that Father had a substance use disorder involving methamphetamine and that he was unable to provide a safe and stable home unless he attained sobriety. The court further found that Father had not consistently exercised parenting time with A.P. and that the home was infested with bugs. Accordingly, the trial court adjudicated A.P. a CHINS.

¹ Mother's parental rights were also terminated, but she is not a party to this appeal. Accordingly, we will primarily recite the facts most relevant to the termination of Father's parental rights.

- [3] In September 2020, DCS removed B.P. from the parents' care on an emergency basis shortly after his birth. DCS filed a CHINS petition on September 9, 2020, alleging that B.P. was born positive for methamphetamine, was premature, and was experiencing symptoms related to drug exposure in utero. DCS further alleged that although Father had engaged in some services, he continued to test positive for methamphetamine. Following a hearing, the trial court adjudicated B.P. a CHINS.
- [4] The trial court held a dispositional hearing in October 2020. In relevant part, the parents were ordered to participate in the following: a substance use assessment, a parenting assessment, random drug screens, services related to the results of any assessments, home-based case work, and supervised visits. Father was also referred for a psychological assessment. At the time of the dispositional order, the permanency plan for the Children was reunification.
- [5] A review hearing was held in January 2021. The trial court found that Father was not in compliance with the dispositional order. Specifically, while Father did complete a substance use evaluation, he failed to follow through with recommended services and further submitted three positive drug screens for methamphetamine, two in September and one in December 2020. Father also participated in less than half of scheduled visits with the Children. Another review hearing was held in April 2021. Following that hearing, the trial court found that Father was still noncompliant with services and continued to test positive for methamphetamine. The trial court changed the permanency plan to a concurrent permanency plan of reunification and adoption/termination.

[6] DCS filed petitions to terminate both parents' rights on June 4, 2021. Termination factfinding hearings were held in July, August, and September 2021. DCS presented substantial evidence regarding Father's noncompliance with required services. The record demonstrated that Father missed over sixty scheduled visits with the Children during the pendency of the CHINS case, and he continued to exhibit little understanding of or appreciation for B.P.'s severe developmental deficits and resultant medical needs.² Significantly, Father continued to use and test positive for methamphetamine, had recently been convicted of and incarcerated for possession of methamphetamine, and he testified during the termination hearing as to his firm belief that "he can safely parent while using methamphetamine on a regular basis." Appealed Order at 4.

[7] On October 11, 2021, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside the home will not be remedied by Mother or Father; (2) there is a reasonable probability that continuation of the parent-child relationship between both Parents and the Children poses a threat to the Children's well-being; (3) termination of the

² The evidence indicates that, due to his premature and drug-addicted birth, B.P. is three to four months behind developmentally, cannot chew solid food, requires a medically prescribed diet, and must be monitored during feedings so that he does not aspirate. He cannot sit up or hold his own bottle. During a scheduled visit, the parents were observed bringing chicken nuggets for B.P. to eat, and they seemed not to understand the safety risk posed by such behavior. Moreover, B.P.'s medical needs require him to see three different specialists at Riley Hospital in Indianapolis, and the parents have consistently "shown difficulty in meeting their own transportation needs locally, which suggests that they would not be able to meet [B.P.'s] needs to travel out of town for appointments." Appealed Order at 5.

parent-child relationship between both Parents and the Children is in the Children's best interests; and (4) DCS has a satisfactory plan for the Children's care and treatment, which is adoption by the current foster family. Accordingly, the trial court determined that DCS had proven the allegations of the petitions to terminate by clear and convincing evidence and therefore terminated both Mother's and Father's parental rights. Only Father appeals.

Discussion and Decision

[8] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed." *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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). DCS must prove that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In deference to the trial court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous.

Id. at 92-93 (citations omitted). “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 R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

[10] Father challenges the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in the Children’s removal from and continued placement outside the home will not be remedied.³ In determining whether there is a reasonable probability that the conditions that led to the Children’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to their placement and retention in foster care.” *Id.* Second, “we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke Cnty. Off.*

³ Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Thus, although Father also challenges the trial court’s conclusion that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the Children’s well-being, we address only the evidence pertaining to 4(b)(2)(B)(i).

of Fam. & Child., 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS “need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent’s behavior will not change.” *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, the Children were initially removed from the home and remained outside of Father’s care for a multitude of reasons, including his methamphetamine use. Father has rejected court-ordered services aimed at treating his substance abuse, and, at the time of termination, he remained in complete denial regarding the impact his drug use has on his ability to parent the Children. Indeed, Father brushed off his recent conviction and incarceration for methamphetamine possession, he admitted during the termination hearing that he continues to use methamphetamine daily, and he testified to his outrageous belief that he can provide safety and stability to the Children while continuing to abuse methamphetamine. Tr. Vol. 2 at 50.⁴ This evidence supports the trial court’s conclusion that there is a reasonable probability that the conditions that led to the Children’s removal and continued placement outside Father’s care will not be remedied.

⁴ Father continues with this outrageous claim in his appellate brief. *See* Appellant’s Br. at 10, 12 (“Father argues that his own personal methamphetamine use has not been demonstrated to be harmful to his children” and “DCS presented no evidence of a nexus between Father’s methamphetamine use and an inability to parent his children that was not likely to be remedied.”)

[12] Father has demonstrated an unwillingness to stay clean and provide proper stability for his Children throughout the pendency of these proceedings. We have little difficulty agreeing with the trial court that Father's habitual pattern of conduct justified termination of his parental rights. The trial court's termination order is affirmed.

[13] Affirmed.

Bradford, C.J., and Tavitas, J., concur.