

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re: the Involuntary
Termination of the Parent-Child
Relationship of:

H.B. (Minor Child),
and

M.B. (Father)

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

February 21, 2024

Court of Appeals Case No.
23A-JT-2109

Appeal from the Hamilton
Superior Court

The Honorable Michael Casati,
Judge

The Honorable Valorie S. Hahn,
Magistrate

Trial Court Cause No.
29D01-2303-JT-000382

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

[1] M.B. (“Father”) appeals the involuntary termination of his parental rights to H.B. (“Child”). Father presents multiple issues on appeal, which we restate as:

1. Whether Findings 13, 14, 15, and 16 were impermissible recitations of the testimony of Family Case Manager Lyndsay Berg (“FCM Berg”) and Guardian ad litem Leigh Rudicel (“GAL Rudicel”);
2. Whether the trial court’s findings supported its conclusions that the conditions under which Child was removed from his care would not be remedied and the continuation of the parent-child relationship was harmful to Child’s well-being; and
3. Whether the trial court’s findings supported its conclusion that termination of Father’s parental rights was in Child’s best interests.

We affirm.

Facts and Procedural History

[2] Father and S.S. (“Mother”)¹ are the biological parents of Child, born June 21, 2013. Father and Mother were not married at the time of Child’s birth. Father

¹ Mother’s parental rights to Child were also terminated. She does not participate in this appeal.

established paternity via a paternity affidavit. Child was the subject of a prior Child in Need of Services (“CHINS”) case in 2013 because Mother and Father were both incarcerated. Father was arrested in July 2019 and has been incarcerated ever since. It is unclear how much time Child spent with Father prior to 2019, as the record indicates only that Child “partially lived with [Father], but the majority of the time . . . lived with [Mother].” (Tr. Vol. II at 71.) Child’s maternal grandmother began caring for Child in July 2019, because Mother could not be located and Father was incarcerated on drug charges.

[3] On March 9, 2021, maternal grandmother reported to the Department of Child Services (“DCS”) that she was unable to locate Mother and thus could not obtain consent to seek medical treatment for Child or to enroll Child in school. On the same day, DCS filed a petition to declare Child a Child in Need of Services (“CHINS”) based on neglect.

[4] On December 8, 2021, Father admitted Child was a CHINS based on Father’s incarceration. On April 29, 2022, the trial court held its dispositional hearing. On May 2, 2022, the trial court issued its dispositional order and required Father to, among other things: stay in contact with FCM Berg; obtain and maintain a legal and stable source of income; obtain and maintain stable and suitable housing; obey the law; refrain from using or selling illegal substances; complete parenting, substance abuse, and psychological assessments and follow all recommendations stemming therefrom; complete random drug screens; and visit with Child.

[5] Father was incarcerated for the entirety of the CHINS case and did not visit with Child. Father sent “three, four letters, probably about three or four cards” and a teddy bear. (*Id.* at 13.) Child’s therapist, GAL Rudicel, and FCM Berg reviewed the letters, cards, and teddy bear to determine if they were appropriate communications with Child. They allowed Child to receive the cards and teddy bear, but declined to give Child the letters because of the fact that Child and Father “had not had a really close relationship[,]” and the letters that included “the narrative of can’t wait until we’re together again” which could be “something triggering for [Child], just out of the blue to get a letter[.]” (*Id.* at 45.) Father tried to call Child twice while she was in maternal grandmother’s care, but maternal grandmother would not let him speak with Child. GAL Rudicel was unable to contact Father at the Marion County Jail, and Father did not attempt to contact FCM Berg during the proceedings.

[6] On October 18, 2022, the trial court entered an order changing Child’s placement from maternal grandmother to relative care in Ohio.² On November 3, 2022, the trial court held a hearing on Child’s permanency plan. On November 7, 2022, the trial court changed Child’s permanency plan to adoption. On November 18, 2022, Child moved to relative care in Ohio, where she has remained. In January 2023, Father was transferred from the Marion County Jail to the Department of Correction.

² The record does not indicate whether these relatives were maternal or paternal, but Father indicates in his brief that they are on Child’s maternal side.

[7] Based on Father’s noncompliance with services, DCS filed a petition to terminate Father’s parental rights to Child on March 20, 2023. In April 2023, Father completed a parenting assessment, and he completed the “Fathers and Family” program where he learned “fathers’ [sic] issues, how to deal with . . . children . . . being a father, how to engage, . . . being a roll [sic] model, . . . mentor” in June 2023. (*Id.* at 55.) Additionally, Father participated in “individual counseling” through the Department of Correction “for mental health reasons, just to get a better understanding, you know, a different opinion. You know, growth with my train of thought and change my way of thinking.” (*Id.* at 57.)

[8] On July 21, 2023, the trial court held a fact-finding hearing on DCS’s petition to terminate Father’s parental rights. FCM Berg and GAL Rudicel testified regarding Father’s noncompliance with services and his lack of bond with Child due to his limited interaction with her. Father told the trial court he had not seen Child in person since June 2019 and did not know Child was living with maternal grandmother until around 2021.

[9] Father stated he was scheduled to be released from incarceration in November 2023. After his release he would be on house arrest at his mother’s house, where he would be required to have a job as part of his Community Corrections program. When asked if he thought termination of his parental rights was in Child’s best interests, Father answered he did not and stated, “[b]ecause [Child] is me all over again. . . . Like her reactions is [sic] my reactions. What she’s doing, this is me all over again. I know her. This is my genetics, [sic] this is my

DNA.” (*Id.* at 73.) On August 15, 2023, the trial court entered its order terminating Father’s parental rights to Child.

Discussion and Decision

[10] “The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children.” *In re A.L.*, 223 N.E.3d 1126, 1137 (Ind. Ct. App. 2023). However, a juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Id.* The termination of parental rights is appropriate when parents are “unable or unwilling to meet their parental responsibilities[.]” *Id.* (quoting *Bester v. Lake Cnty. Ofc. of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). The termination of the parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[11] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (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 county office of family and children 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). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *In re Q.M.*, 974 N.E.2d 1021, 1024 (Ind. Ct. App. 2012) (quoting *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994)).

[12] When reviewing a trial court’s termination of parental rights,

“we do not reweigh the evidence or judge witness credibility.”
We consider only the evidence and reasonable inferences that are most favorable to the judgment and give “due regard” to the trial court’s unique opportunity to judge the credibility of the witnesses. “We will set aside the trial court’s judgment only if it is clearly erroneous.”

In re V.A., 51 N.E.3d 1140, 1143 (Ind. 2016) (internal citations omitted).

1. Trial Court Findings

[13] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *In re Adoption of T.L.*, 4 N.E.3d 658, 662 (Ind. 2014). First, we must determine whether the evidence supports the findings and then whether the findings support the trial court’s judgment. *Id.* A finding is clearly erroneous when the record lacks evidence or reasonable inferences from the evidence to support it. *Steele-Giri v. Steele*, 51 N.E.3d 119, 125 (Ind. 2016). “We accept unchallenged findings as true.” *Henderson v. Henderson*, 139 N.E.3d 227, 232 (Ind. Ct. App. 2019).

[14] Father challenges Findings 13 and 14³ which state:

³ Father also claims to be challenging Findings 4, 6, 7, 8, 9, 10, 11, and 12, but he does not argue the evidence does not support these findings. Thus, in a later section of this opinion, we will address whether these findings support the trial court’s conclusion that the conditions under which Child was removed from Father’s care would not be remedied.

13) The Family Case Manager, Lyndsay Berg, testified it is in the best interest of [Child] for this Court to grant the Petition and to terminate Father's Parent-Child Relationship. This is due to Father's lack of effort to reunify with [Child] in a meaningful manner since April 9, 2021. The granting of the termination of [the] parental rights petition is what's best for the Child's life. In addition, there is a satisfactory plan for permanency for [Child], which is for [Child] to be adopted by the current placement [relative care in Ohio].

14) The Guardian Ad Litem, Leigh Rudicel, testified that it is in [Child's] best interests to have Father's Parent-Child relationship terminated so that the Child may be adopted by the current placement. Ms. Rudicel believes that [Child] is thriving in her current placement. [Child] is happy and well-bonded to that placement.

(App. Vol. II at 33.) Father argues Findings 13 and 14 are impermissible recitations of the testimony of FCM Berg and GAL Rudicel. Indeed, findings that are merely "recitation of the evidence that was presented at the hearing" are not findings of fact. *In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003). A proper finding "must adopt the testimony of the witness" before a finding can be considered a finding of fact. *Id.*

[15] However, the findings here are not mere recitations of the testimony by FCM Berg and GAL Rudicel. Finding 13 indicates FCM Berg testified in support of the termination of Father's parental rights. Then, based thereon, the trial court summarized and adopted Berg's testimony that termination was appropriate based on "Father's lack of effort to reunify with [Child] in a meaningful manner[,] termination of Father's parental rights was in Child's best interests,

and adoption by Child's current placement in Ohio was a satisfactory plan for Child following termination. (App. Vol. II at 33.)

[16] The finding regarding GAL Rudicel's testimony was somewhat the same. The trial court noted GAL Rudicel's testimony about Child's best interests and then found Child is "happy and well-bonded" to her relative placement. (*Id.*) Based thereon, we conclude Findings 13 and 14 are not merely restatements of the testimony of Berg and Rudicel and thus are appropriate findings of fact. *See S.L. v. Indiana Dep't of Child Servs.*, 997 N.E.2d 1114, 1122 (Ind. Ct. App. 2013) (finding of fact not a recitation of the evidence when it "contains thoughtful findings that flow from the evidence").

2. Whether Conditions Would Be Remedied

[17] Father argues the trial court's findings do not support its conclusion that the conditions under which Child was removed from his care would not be remedied. He contends that Findings 4, 6, 7, 8, 9, 10, 11, and 12 do not support the trial court's conclusion that his parental rights should be terminated. These findings state:

4) A Fact-Finding hearing for Father was held on or about December 8, 2021. At that time, Father withdrew his previously entered denial, and Father admitted that he was incarcerated and unable to provide care for [Child]. [Child] was adjudicated a Child in Need of Services pursuant to 31-34-1-1.

* * * * *

6) Father never progressed in visitation or a trial home visit with Child.

7) [Child] has been removed from Father's care from April 9, 2021 to present, and [Child] is currently in a pre-adoptive home, and [Child] has been in that home since November 18, 2022.

8) On or about November 3, 2022, the CHINS court held a permanency hearing that Father appeared for. At this CHINS hearing, the CHINS court changed the permanency plan from reunification to adoption.

9) In the underlying CHINS proceeding, Father has participated in Fatherhood Engagement, but has not complied with other services or the Court's dispositional orders. The lack of participation was in part due to the restrictions in place by his facility [Indiana Department of Correction] where he has been incarcerated since January of 2023.^[4]

10) Father has had no meaningful or consistent visitation or interaction with [Child], through the date of the Fact-Finding hearing on the termination petition. The evidence is that since the commencement of the CHINS case, Father communicated two times with prior placement [maternal grandmother] but there was no contact with [Child]. The evidence is that he sent 3 or 4 letters during 2020 and 2021 to [Child] at prior placement's residence. There was a permanency hearing in the underlying CHINS case on July 22, 2022 where the change of permanency was taken under advisement by the Court and the permanency hearing was reset as to Father. There was no communication from Father to [Child] from the July 22, 202[2] hearing and the permanency hearing on November 3, 2022. At the hearing on

⁴ Prior to January 2023, Father was incarcerated in the Marion County Jail.

November 3, 2022 the permanency plan was changed to adoption. Father sent approximately 3 letters, 2 cards and 1 teddy bear since the permanency plan was changed in November 2022 approximately 8 months ago.

11) The evidence is that Father agrees that he has not provided stability to [Child].

12) The above stated attempted communications is the extent of the bond that Father and Child have had during the underlying CHINS case.

(App. Vol. II at 31) (footnote added).

[18] Father contends these findings do not support the trial court's conclusion that the conditions under which Child was removed from his care would not be remedied because Child was removed due to Father's incarceration and Father was scheduled to be released from prison in November 2023. In support of his argument, Father analogizes the facts of his case with those of *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641 (Ind. 2015). In *K.E.*, the father's incarceration was one of the reasons his child was adjudicated a CHINS and the father remained incarcerated through the entirety of the proceedings. *Id.* at 643. The father was unable to receive services from DCS due to his incarceration, but he completed twelve classes related to "self-improvement, parenting, and drug and alcohol abuse." *Id.* at 644. In addition, the child's placement took the child to visit with the father "for two to three hours at a time" and the father participated in "nightly phone calls" with the child. *Id.* Moreover, upon his release, the father planned on living with his father, who had a job ready for the

father. *Id.* at 647. At the termination fact-finding hearing, the father’s earliest possible release date from incarceration was less than a year away, and the CASA in that case recommended that the decision regarding termination of the father’s parental rights be delayed “until it was determined whether [the father’s] sentence would be modified.” *Id.* at 644. The CASA indicated she also made the recommendation because the father had a bond with the child and DCS had not offered him the same services it offered the mother due to the father’s incarceration. *Id.* Nonetheless, the trial court granted DCS’s petition to terminate the father’s parental rights. *Id.*

[19] The father appealed and argued the trial court’s findings did not support its conclusions that the conditions under which the child was removed from his care would not be remedied and that the continuation of the father-child relationship would threaten the child’s well-being. *Id.* at 647, 649. Our Indiana Supreme Court considered the father’s efforts while incarcerated, his bond with the child, and his plans following his release from incarceration. *Id.* at 648-9. Because of the father’s individual efforts to obtain reunification with his child, the Court determined the trial court’s termination of the father’s parental rights was based only on the father’s incarceration and held, in part, that “incarceration is an insufficient basis for terminating parental rights.” *Id.* at 643.

[20] The facts here are distinguishable from those in *K.E.* First, Father completed a minimal number of services required by the trial court’s dispositional order. He completed a parenting assessment and participated in Fathers and Family, but

he only did so approximately one month prior to the termination fact-finding hearing. Father also participated in individual therapy while incarcerated. In *K.E.*, the father participated in twelve different programs while incarcerated in an effort to reunify with his child. *Id.* at 644.

[21] Additionally, in *K.E.* the father had a bond with his child through regular visits and nightly phone calls. *Id.* Here, Father and Child had no bond. Father's relationship with Child was strained. He was involved in an earlier CHINS case with Child in 2013 due to an earlier incarceration, and his continued criminal behavior resulted in a second CHINS proceedings.

[22] Child had not seen Father in person since June 2019, and prior to the filing of the CHINS case, Father did not know Child was living with maternal grandmother rather than Mother. Father last saw Child via video during his grandfather's funeral. Father did not have visitation with Child and contacted her only periodically during these CHINS and termination proceedings -- over a period of almost two years he made two telephone calls and sent a small number of letters, cards, and a teddy bear. Father testified he did not know where Child was placed during the CHINS proceedings. GAL Rudicel testified, regarding Child's feelings about Father, "the reactions that I see when [Father] is talked about from [Child] indicate that she is afraid of him." (Tr. Vol. II at 46.)

[23] As there were factors other than Father's incarceration that the trial court considered when it terminated Father's parental rights to Child, we conclude

the termination of his parental rights was not based solely on his incarceration. *Contra, e.g., In re G.Y.*, 904 N.E.2d 1257, 1264 (Ind. 2009) (the trial court impermissibly based termination of the mother’s parental rights on mother’s incarceration because mother, while incarcerated, took several steps toward reunification with her child, including engaging in services and visiting with her child), *reh’g denied*. Additionally, the findings support the trial court’s conclusion that the conditions under which Child was removed from Father’s care would not be remedied.⁵ *See, e.g., In re P.B.*, 199 NE.3d 790, 799 (Ind. Ct. App. 2022) (father’s inconsistent participation in services and lack of bond with child supported the trial court’s conclusion that the conditions under which child was removed from father’s care would not be remedied), *reh’g denied, trans. denied*.

3. Child’s Best Interests

[24] Father argues the trial court’s findings do not support its conclusion that the termination of Father’s parental rights was in Child’s best interests. When we consider whether termination of a parent’s rights is in the child’s best interests, the trial court is “required to look at the totality of the evidence.” *Z.B. v. Ind.*

⁵ Father also argues the trial court’s findings do not support its conclusion that the continuation of the Father-Child relationship poses a danger to Child’s well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code Section 31-35-2-4(b)(2)(A). *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code Section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*. As the trial court’s findings support its conclusion that the conditions under which Child was removed from Father’s care would not be remedied, we need not address whether its findings also supported a conclusion that continuation of the relationship poses a danger to Child’s well-being.

Dep't of Child Servs., 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*.

When it does so, the trial court “must subordinate the interests of the parents to those of the children involved.” *Id.* The trial court “need not wait until a child is irreversibly harmed” before terminating the parent-child relationship. *Id.* Additionally, testimony from service providers may support a finding that termination is in a child’s best interests. *Id.*

[25] Father contends the findings regarding the Child’s best interests “merely point[] out that termination is being granted in pursuit of permanency[.]” (Father’s Br. at 30.) Father argues the trial court erred when it did not make an explicit finding that termination was in Child’s best interests. However, the trial court’s findings mention Child’s best interests in Findings 13 and 14, which we determined to not be clearly erroneous in our analysis above. Further, the trial court’s other findings regarding Father’s lack of participation in services and lack of bond with Child support its conclusion that termination in Child’s best interests. Additionally, Father does not challenge the findings in which the trial court noted Father’s lack of participation in services, including visitation, and the fact that Child had no bond with Father.

[26] Finally, Child had bonded to her current placement, who wished to adopt her, which also supports the trial court’s conclusion that termination was in Child’s best interests. While Father’s earliest release date from incarceration was November 2023, there is no evidence that he would be able to care for Child upon release from incarceration, especially considering she is in pre-adoptive relative placement in Ohio and he indicated to the trial court that he intended to

spend his house arrest in Indianapolis. Based thereon, we conclude the trial court's findings support its conclusion that termination of Father's parental rights was in Child's best interests. *See, e.g., Matter of G.M.*, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017) (termination in child's best interests because mother had not progressed in services and continued to be unable to care for child).

Conclusion

[27] Father's challenges to Findings 13 and 14 fail because those findings were not mere recitations of the testimony of FCM Berg and GAL Rudicel.

Additionally, the trial court's findings supported its conclusion that the conditions under which Child was removed from Father's care would not be remedied and the trial court did not impermissibly come to that conclusion based solely on Father's incarceration. Finally, the trial court's findings supported its conclusion that termination was in Child's best interests.

Accordingly, we affirm the termination of Father's parental rights to Child.

[28] Affirmed.

Vaidik, J., and Kenworthy, J., concur.