

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re the Matter of the
Involuntary Termination of the
Parent-Child Relationship of:
N.Y. (Minor Child) and J.Y.
(Mother) and C.G. (Father)

C.G. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

September 26, 2022

Court of Appeals Case No.
22A-JT-419

Appeal from the Noble Superior
Court

The Honorable Steven C. Hagen,
Judge

Trial Court Cause No. 57D02-
2102-JT-4

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, C.G. (Father), appeals the trial court's Order, terminating his parental rights to his minor child, N.Y. (Child).
- [2] We affirm.

ISSUE

- [3] Father presents this court with one issue, which we restate as: Whether the Department of Child Services' (DCS) petition to terminate Father's parental rights to Child was supported by clear and convincing evidence.

FACTS AND PROCEDURAL HISTORY

- [4] Child was born to J.Y. (Mother)¹ and Father (collectively, Parents) on July 30, 2013. Child has two younger siblings (Siblings), a sister and a brother, who have other fathers. On November 25, 2015, Father judicially established his paternity of Child.
- [5] On September 13, 2016, Child and Siblings were removed from Mother's care due to her methamphetamine use, the poor conditions of Mother's home, and Mother's lack of stability. Father was unable to care for Child at that time

¹ Mother's parental rights to Child were also terminated in the instant proceeding. Mother did not participate in the termination proceedings and does not participate in this appeal. The facts and procedural history relevant to this case will be limited as much as possible to Father's involvement with Child.

because he was serving a sentence on work release for Class B felony manufacturing methamphetamine and other convictions. Child was placed in foster care with Siblings. On September 15, 2016, DCS filed a petition alleging that Child was a child in need of services (CHINS). On November 18, 2016, Parents admitted that Child was in need of services, and Child was adjudicated a CHINS. In December 2016, CASA Myrlee Gray (CASA Gray) was appointed to represent Child's interests. On February 9, 2017, and March 21, 2017, the trial court entered its dispositional orders, directing Parents to engage in services. Father was ordered to remain in contact with DCS, maintain suitable and stable housing and employment, and to complete evaluations and services directed at his substance abuse, parenting, and mental health. Father was also directed to obey the law and not to consume or sell any illegal controlled substances.

- [6] During the CHINS proceedings, Mother's whereabouts were unknown for long periods of time. In early 2020, Mother reengaged with DCS and began participating in services and visits with Child. A trial home visit with Mother was attempted in late July 2020 but was terminated on August 5, 2020, due to Mother being evicted from her sober living facility for admitted drug use. After the trial home visit was terminated, Mother went missing again. As to Father, a few days after Child and Siblings were removed from Mother in September 2016, Father removed his ankle bracelet and absconded from work release. Father was taken back into custody within a few days and was later convicted of escape. Father was released from incarceration in March of 2018. Father

contacted DCS' Family Case Manager, Casey Steele-McNamara (FCM), and met with FCM once to discuss engaging in services and possible visits with Child. FCM provided Father with contact information, but Father never contacted FCM again. Within three months of his release, Father was arrested on Level 3 and Level 4 felony charges of methamphetamine possession. Father subsequently pleaded guilty to the Level 4 felony charge, was sentenced, and has an earliest possible release date of December 2025.

[7] On December 17, 2020, Child's permanency plan was changed from reunification to adoption. On February 22, 2021, DCS filed its petition to terminate Parents' rights. On September 30, 2021, the trial court held an evidentiary hearing on DCS' petition to terminate Mother's parental rights. Mother had been out of contact with DCS since May 26, 2021. Child's foster mother testified that for five years Child and Siblings had been with their foster family, where "[t]hey know what to expect daily . . . they don't have to worry and wonder." (Transcript Vol. II, p. 134). Child's ability to learn had increased, resulting in dramatically increased test scores at school. Child had urology issues that her foster mother addressed through dietary modification and daily medication.

[8] On December 17, 2021, the trial court held an evidentiary hearing on DCS' petition to terminate Father's rights to Child. Father admitted that he had a problem with drug addiction. Father testified that he had completed several programs while incarcerated, including programs to improve his parenting, anger management, and substance abuse. Father was currently in the last phase

of Recovery While Incarcerated. Father had a pending request for sentencing modification but confirmed that his earliest certain release date was December 6, 2025. Child's foster mother provided an update on Child's progress in the care of her foster family, which continued to be good. Child considered her foster mother and father to be her parents, and they considered her to be their daughter. Child was thriving academically and emotionally. Child's foster mother testified that, apart from an occasional card, Child had not had contact with Father and that there had never been any request that Child visit Father in prison. DCS provided evidence that Father had regular contact with DCS while he was incarcerated. Although Father was given progress reports about Child, he did not request visits or videocall contact with Child. DCS was unable to confirm that the programs that Father had completed were consistent with the CHINS dispositional order. Child's FCM and CASA recommended termination of Father's parental rights and adoption by Child's foster parents, citing Father's inability to provide care and support for Child due to his incarceration and due to the fact that he had no parent/child relationship with Child. CASA opined that Child experienced anxiety at the prospect of being removed from her foster family and that Child "deserves permanency." (Tr. Vol. II, p. 206).

- [9] On January 21, 2022, the trial court entered its Order, terminating Father's parental rights to Child. The trial court entered detailed findings of fact consistent with the aforementioned facts. The trial court concluded, in relevant part that, due to Father's criminal history, drug abuse, history of neglect, and

failure to provide Child support and adequate housing, there was a reasonable probability that the conditions that led to Child's removal would not be remedied and that there was a substantial probability of future neglect.

[10] Father now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[11] Father challenges the sufficiency of the evidence supporting the trial court's Order terminating his parental rights to Child. It is well-settled that when reviewing the evidence supporting the termination of parental rights, we neither reweigh the evidence nor determine the credibility of witnesses. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). In addition, we consider only the evidence that supports the judgment and the reasonable inferences to be drawn from that evidence. *Id.* "We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment." *Id.* We must give due regard to the trial court's opportunity to judge the credibility of witnesses firsthand, and we do not set aside the trial court's findings or judgment unless it is clearly erroneous. *Id.* In addition, where, as here, none of the trial court's findings of fact are challenged, we accept those findings of fact as true. *See S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

II. *Termination of Father's Rights*

[12] “[O]ne of the most valued relationships in our culture” is that between a parent and his or her child. *In re G. Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). Indeed, “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Accordingly, the Fourteenth Amendment to the United States Constitution safeguards “the traditional right of parents to establish a home and raise their children.” *Id.* Nevertheless, parental interests are not absolute; rather, termination of parental rights is appropriate when parents are unable or unwilling to meet their parental responsibilities. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008).

[13] Termination of parental rights is an extreme sanction that is intended as a “last resort” and is available only when all other reasonable efforts have failed. *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 91 (Ind. Ct. App. 2014). As such, before a termination of parental rights is merited, the State is required to prove several facts by clear and convincing evidence, including, in relevant part, that there is a reasonable probability that the conditions which resulted in a child’s removal and continued placement outside the home will not be remedied. Ind. Code §§ 31-35-2-4(b)(2)(B)(i).

III. *Probability Conditions Will Not Be Remedied*

[14] Father’s sole challenge to the sufficiency of the evidence is to the trial court’s determination that there was a reasonable probability that the conditions that merited Child’s removal and continued placement outside the home will not be

remedied. When reviewing a trial court's determination on this factor, we engage in a two-step analysis. *E.M.*, 4 N.E.3d at 642-43. First, we must identify the conditions that led to removal; second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. When engaging in the second step of this analysis, a trial court must judge a parent's fitness as of the time of the termination hearings, taking into account evidence of changed conditions, and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* This delicate balance is entrusted to the trial court, and a trial court acts within its discretion when it weighs a parent's prior history more heavily than efforts made only shortly before termination. *Id.* "Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior." *Id.*

- [15] The reason for Child's removal and continued placement outside the home, as that factor pertains to Father, was that Father was unable to provide care for and support Child because he was serving a sentence for methamphetamine manufacturing. After serving his sentences for that conviction and for his escape conviction, Father was released from custody for three months in 2018 but was quickly re-arrested on methamphetamine possession charges. During his time out of custody, Father did not engage in court-ordered services or have visits with Child. Apart from a few cards, there has been no contact between Father and Child, and, therefore, they have no parent/child relationship.

Father's earliest possible release date is not until December 2025. Therefore, throughout the CHINS case and the instant proceedings, Father never provided Child with care, support, or a stable home environment, and he never had any meaningful contact with Child. Father will be unable to do so for at least three more years. We conclude that the trial court's determination regarding the 'conditions' factor was supported by the evidence and the reasonable inferences to be drawn therefrom. *See In re J.S.*, 183 N.E.3d 362, 370 (Ind. Ct. App. 2022) (observing that a parent's prior criminal record, history of drug or alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment supports a determination that the conditions that merited continued placement outside the home will not be remedied).

[16] Father argues that the mere fact that he is incarcerated does not merit termination, and he likens his case to *K.E. v. Indiana Department of Child Services*, 39, N.E.3d 641, 647-49 (Ind. 2015), wherein our supreme court held that insufficient evidence supported the trial court's determination that there was a likelihood that K.E.'s father, who was incarcerated, would fail to remedy the conditions that caused K.E.'s continued placement outside the home. Like Child, K.E. had been removed while K.E.'s father was incarcerated, and the chief reason for terminating the father's rights had been his continued inability to provide support and care for K.E. due to his imprisonment, a condition which would continue for at least two more years. *Id.* at 644-45, 647. In reversing the trial court's termination order, our supreme court cited the uncontroverted evidence that K.E.'s father had future plans for employment

and a place to live, the father had completed twelve voluntary programs to improve himself while incarcerated which had not resulted in sentence reductions, and Father had worked at developing a bond with K.E. through having in-person visitation every other week for between two and three hours and nightly phone calls. *Id.* at 648-49.

[17] Father directs our attention to the eleven voluntary programs he testified at the fact-finding hearing that he claimed to have completed, many of which appear to be similar to those K.E.'s father had completed. However, while Father's efforts at self-improvement while incarcerated are commendable, DCS was unable to determine to what extent any of the programs completed by Father were consistent with the trial court's CHINS dispositional order. More importantly, unlike *K.E.*, there was no evidence that Father had post-incarceration employment and housing plans, and Father has no bond with Child. Rather, Father's contact with Child has been limited to a few cards since Child has been in foster care. After Father lost his freedom in June 2018 on the charges that resulted in his present incarceration, he never requested visits with Child, either in-person or through videocall. Given Father's lack of post-incarceration plans and his failure to develop any bond with Child during his incarceration, we do not find that the evidence of Father's recent improvements so overwhelmed the evidence of his habitual patterns of conduct in the same manner as did our supreme court in *K.E.*, and we cannot say, as did the *K.E.* court that "there is seemingly nothing else that Father could have been doing to demonstrate his dedication to obtaining reunification." *Id.* at 649.

CONCLUSION

[18] Based on the foregoing, we conclude that the trial court's Order, terminating Father's parental rights to Child was supported by clear and convincing evidence.

[19] Affirmed.

[20] Bailey, J. and Vaidik, J. concur