

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of M.R., R.R., & A.R. (Minor
Children),

and

C.R.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 3, 2023

Court of Appeals Case No.
22A-JT-2445

Appeal from the Huntington
Superior Court

The Honorable Jennifer E.
Newton, Judge

Trial Court Cause Nos.
35D01-2202-JT-4
35D01-2202-JT-5
35D01-2202-JT-6

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

- [1] C.R. (“Father”) appeals the termination of his parental rights to M.R., R.R., and A.R. (collectively, “Children”), challenging the sufficiency of the evidence.¹ We affirm.

Facts and Procedural History

- [2] In June 2018, Father and T.R. (“Mother”) signed an informal adjustment agreement after the Indiana Department of Child Services (“DCS”) received a report about suspected abuse or neglect of M.R. (born February 1, 2016) and R.R. (born August 29, 2017) because of exposure to domestic violence and drug use. Father and Mother agreed to complete drug screens and home-based services, including counseling, substance abuse treatment, and domestic violence education. Father participated in drug screens but not the other agreed services. Father tested positive for THC the day after signing the informal adjustment agreement and again later that month. Mother was pregnant with A.R. at the time.

¹ Children’s biological mother filed her consents to Children’s adoption and does not participate in this appeal.

- [3] On July 1, 2018, police responded to an incident of domestic violence between Father and Mother in front of M.R. and R.R. Two days later, Father refused to attend a child and family team meeting intended to address his positive drug screens and failure to participate in substance abuse and domestic violence services. During the meeting, Mother stated she would keep herself, M.R., and R.R. away from Father, but Mother and Father were back together with M.R. and R.R. around July 9. Later that month, a person living in the home where Father, Mother, M.R., and R.R. had been staying confirmed the family had been kicked out for fighting in front of M.R. and R.R.
- [4] DCS filed a petition alleging M.R. and R.R. to be Children in Need of Services (“CHINS”) on August 8, 2018, and removed M.R. and R.R. from Father’s and Mother’s custody the next day. A joint initial-dispositional hearing took place on October 5, 2018. Father admitted M.R. and R.R. were CHINS due to Father’s history of methamphetamine use, continued use of marijuana, failure to enroll or participate in any services during the informal adjustment, unstable housing, and continued contact with Mother and the children. The court granted DCS wardship of M.R. and R.R. DCS placed M.R. and R.R. with a foster parent and later transitioned them into a pre-adoptive home. The court ordered Father to cooperate with DCS, refrain from using illegal controlled substances, participate in home-based counseling and show positive changes in his life as a result, complete a parenting assessment and complete all recommendations, complete a substance abuse assessment, not commit any domestic violence, and attend all visitation.

- [5] A.R. was born October 30, 2018, and stayed with Father and Mother.
- [6] Father attended therapy sessions through a few programs in 2018 and 2019 but completed none of the programs. Father was in jail from April 26 through May 10, 2019. The court required two consecutive negative drug screens as a condition for Father's visitation. He continued to test positive for THC in August and September 2019 and stopped visiting M.R. and R.R. after August 29, 2019. Father submitted no further drug screens until after a court hearing on December 27, when he again tested positive for marijuana.
- [7] In February 2020, the trial court found Mother and Father in contempt of court for not following the dispositional orders. Father agreed to start services again. In March, Father began home-based case management but did not complete the service, telling his family case manager ("FCM") that "he felt that services weren't necessary." *Tr. Vol. 2* at 129. Father continued to use marijuana and resumed his prior use of methamphetamine.
- [8] In July 2020, the trial court changed M.R.'s and R.R.'s permanency plan to concurrent plans of reunification and adoption. Father's visits were suspended around that time because of positive drug screens. Domestic violence between Father and Mother continued.
- [9] In September 2020, DCS filed a petition alleging A.R.—by that point, nearly two years old—was a CHINS because of domestic violence and illegal drugs in the home and Father's failure to abide by the dispositional order entered in M.R.'s and R.R.'s cases. In October, Father and Mother admitted A.R. was a

CHINS. The court conducted a dispositional hearing in November and ordered Father to complete the services previously ordered in 2018, complete a domestic violence assessment and family preservation assessment, and successfully participate in the recommended services from these assessments. A.R. remained in his parents' care.

[10] In December 2020, Mother was in jail. Father, as the sole custodian, left A.R. with caregivers not approved by DCS. Father also tested positive for methamphetamine. While Father was at work, a dog at Father's house bit A.R. in the face. DCS removed A.R. from Father's care, placing him with paternal relatives. After A.R.'s removal from Father's care, the family preservation service closed and the FCM replaced it with a comparable service. Father sporadically attended the new service for a few weeks in 2021 but did not complete it. Father attended counseling sessions in March and May 2021 with goals of addressing his anger and substance abuse.

[11] DCS placed A.R. with his maternal grandparents on July 30, 2021, then placed M.R. and R.R. there on November 1, 2021. The maternal grandparents intend to adopt Children if parental rights are terminated.

[12] DCS filed its petition for involuntary termination of the parent-child relationships of Children and Father in February 2022. The fact-finding hearing took place on August 3, 2022. By that point, Father was incarcerated after being convicted of battery. Father also violated the conditions of his probation by testing positive for methamphetamine and marijuana, and failing

to complete Moral Recognition Therapy (“MRT”) to address his domestic violence issues. *Appellant’s App.* at 73; *Tr. Vol. 2* at 47.

[13] Father attended the fact-finding hearing. Eleven witnesses testified, including service providers and therapists who had worked with Father. The providers discussed Father’s unsuccessful attempts to complete various programs. *See Tr. Vol. 2* at 71–90. When one of the FCMs was asked what she had done to help Father with services, she said:

His services are always available to him, the referrals are always in. He is invited to Child and Family Team meetings, and at those meetings we engage him, and we try and get him to schedule his services. He does schedule them at the meetings, he just does not take the effort to attend them. I have also offered to provide transportation if he needs that.

Id. at 189. The Children’s maternal grandmother testified that Father had not visited the children for over a month prior to the hearing. *Id.* at 115–16. In October 2022, the trial court entered an order terminating Father’s parental rights to Children. The court found DCS met its burden under Indiana Code Section 31-35-2-4(b)(2). Father now appeals.

Discussion and Decision

[14] The Fourteenth Amendment to the United States Constitution protects parents’ rights to establish a home and raise their children. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Due to the importance of the parent-child relationship, “the

Indiana statute governing termination of parental rights sets a high bar for severing this constitutionally protected relationship.” *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). But a parent’s interests must be subordinated to the child’s interests when DCS petitions to terminate parental rights. *K.T.K. v. Indiana Dep’t of Child Servs., Dearborn Cnty. Off.*, 989 N.E2d 1225, 1230 (Ind. 2013).

[15] DCS must allege and prove the elements under Subsections A, B, C, and D of Indiana Code Section 31-35-2-4(b)(2) by clear and convincing evidence. Ind. Code §§ 31-34-12-2 & 31-37-14-2. If the court finds DCS’s allegations true, the court “shall terminate the parent-child relationship,” and the court must enter findings of fact supporting termination. Ind. Code § 31-35-2-8(a), (c). Here, Father challenges the sufficiency of the evidence supporting the trial court’s findings under Indiana Code Sections 31-35-2-4(b)(2)(B)(i) and (ii), which are:

(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.

Father concedes the evidence supports the trial court’s findings as to Subsections A, C, and D of the statute, and we discern no evidentiary defect regarding these Subsections.

- [16] “Upon review of the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015). We consider only the evidence and reasonable inferences favorable to the judgment, *see id.*, and will set aside the trial court’s findings and judgment only if they are clearly erroneous, Ind. Trial Rule 52(A).
- [17] Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, DCS must satisfy its burden under either (B)(i) or (B)(ii). We find DCS proved (B)(i) by clear and convincing evidence.
- [18] The trial court engages in “a two-step analysis to determine whether the conditions that led to the [c]hildren’s placement outside the home will not be remedied.” *K.T.K.*, 989 N.E.2d at 1231. First, the trial court identifies the conditions that led to the children’s placement outside the home. *See In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010). Second, the trial court decides whether there is a reasonable probability those conditions will not be remedied, evaluating “the parent’s fitness at the time of the termination hearing, ‘taking into consideration evidence of changed conditions.’” *K.E.*, 39 N.E.3d at 647 (quoting *Bester*, 839 N.E.2d at 152). When the court finds changed conditions, it balances the changes against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *K.T.K.*, 989 N.E.2d at 1231 (quoting *Bester*, 839 N.E.2d at 152). Habitual conduct includes, among other things, “‘criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment,’ but the services offered to the parent and the

parent's response to those services can also be evidence demonstrating that conditions will be remedied.” *K.E.*, 39 N.E.3d at 647 (quoting *A.F. v. Marion Cnty Off. of Fam. & Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002)).

[19] In this case, DCS removed Children due to Father's drug use and domestic violence between the parents. The trial court found “[i]n July and August of 2020, there was still reported domestic violence between the parents[.]” *Appellant's App. Vol. 2* at 75. The trial court further found Father “was using methamphetamine and that led to the detention of [A.R.],” *id.* at 104, and Father “stopped drug screening” in the spring of 2022, leading to the suspension of his visits with Children, *id.* at 93. Father does not specifically challenge any of the trial court's findings of fact; instead, he argues he *mostly* complied during the CHINS proceedings and *partially* complied with DCS's recommended services. Father claims he wanted to enter a halfway house “to resume services upon him bonding out of jail,” and he needed more time “to demonstrate further compliance.” *Appellant's Br.* at 14. Father's challenge is ultimately a request to reweigh the evidence.

[20] DCS was involved in the cases of M.R. and R.R. since 2018, giving Father four years to establish his compliance. Father has multiple criminal convictions and was incarcerated at the time of the fact-finding hearing. Father testified he had not seen Children since the beginning of 2022 because he was intermittently incarcerated and “got [his] visits taken again.” *Tr. Vol. 2* at 45. He tested positive for illegal substances as recently as June 2022—two months before the fact-finding hearing. Father never completed any service, though services

remained available to him. Father requested more time to show his compliance with the court-ordered services, but the trial court could only evaluate Father's fitness at the time of the hearing. Given Father's four-year pattern of domestic violence, drug use, and limited participation in court-ordered services, the trial court could reasonably conclude Father would not remedy the reasons for Children's ongoing placement in relative care.

Conclusion

[21] We conclude the evidence clearly and convincingly supports the required findings under Indiana Code Section 31-35-2-4(b)(2), and those findings clearly and convincingly support the judgment terminating Father's parental rights.

[22] Affirmed.

Robb, J., and Crone, J., concur.