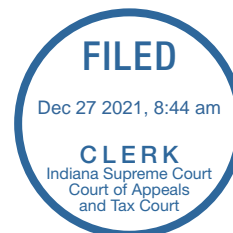


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Lisa M. Johnson
Brownsburg, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of A.T. (Minor Child)

and

S.T. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

December 27, 2021

Court of Appeals Case No.
21A-JT-1863

Appeal from the Vigo Circuit
Court

The Honorable Daniel W. Kelly,
Magistrate

Trial Court Cause No.
84C01-2001-JT-144

Bradford, Chief Judge.

Case Summary

[1] S.T. (“Father”) is the biological father of A.T. (“Child”). The Department of Child Services (“DCS”) became involved with Father, C.M. (“Mother”) (collectively, “Parents”), and Child in February of 2016, after which DCS filed a petition alleging that Child was a child in need of services (“CHINS”) due to allegations of neglect and drug use in the home in which Mother and Child resided. Father did not attend the subsequent dispositional hearing on the CHINS petition because he was incarcerated. Following the hearing, Child was found to be a CHINS. Father was thereafter ordered to complete certain services and was given the opportunity to complete services and work toward reunification with Child following his release from incarceration. Although Father initially made some progress, he did not successfully complete the ordered services; eventually relapsed and began testing positive for illegal drugs, including methamphetamine; and is alleged to have committed serious additional criminal offenses, including attempted murder. DCS petitioned to terminate Father’s parental rights on January 28, 2020.¹ Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On

¹ Mother’s parental rights have previously been terminated and she does not participate in this appeal.

appeal, Father contends that DCS failed to present sufficient evidence to support the termination of his parental rights. We affirm.

Facts and Procedural History

- [2] Child was born to Parents on October 10, 2012. On February 4, 2016, DCS received a report that Child was living in a home where Child's grandfather "was found lying on the floor from an apparent heroin overdose." Appellant's App. Vol. II p. 78. Child's grandfather subsequently tested positive for heroin and oxycodone and Child's grandmother tested positive for heroin, methamphetamine, amphetamine, and THC. Mother and Child subsequently moved out of the home and into a home with Mother's cousin ("Cousin").
- [3] On February 16, 2016, DCS again received a report that Child was living in a home in which drugs were actively being used. On this day, Cousin came home to find Mother smoking marijuana in front of Child. Mother was also allowing Child to spend time with an individual whom she had previously agreed to keep Child away from due to the individual's drug use. After coming home to find Mother using drugs, Cousin made Mother leave her home, leaving Mother homeless. DCS removed Child from Mother's care and initiated CHINS proceedings. At the time of Child's removal from Mother's care, Father was not a possible placement for Child because he was incarcerated.

- [4] In connection to the above-described events, DCS filed a CHINS petition on February 15, 2016. The juvenile court subsequently adjudicated Child to be a CHINS. At disposition, the juvenile court ordered Father to participate in Fatherhood Engagement, submit to random drug screens, attend supervised visits, obtain and maintain employment and suitable housing, and maintain contact with DCS.
- [5] The juvenile court conducted a periodic review hearing in August of 2016, at which time Father was reportedly in a work-release program. The juvenile court ordered Father to complete a drug-treatment program. As of a February 7, 2017 permanency hearing, Father had twice tested positive for illegal drugs and was incarcerated in the Department of Correction (“DOC”) following convictions for arson and burglary. At that time, Father’s earliest release date was May 15, 2018.
- [6] In May of 2018, DCS filed a petition to terminate Parents’ parental rights to Child. This petition was subsequently denied because DCS had failed to present sufficient evidence to support the termination of Father’s parental rights. In addition, the juvenile court opted to give Father, who was about to be released from DOC, the opportunity to complete services aimed at reunification with Child.
- [7] Following his release from the DOC in February of 2019, Father continued with the Fatherhood Engagement program, passed a number of drug screens, and visited Child. By July of 2019, Father began a trial home visit with Child.

Father was living with his grandmother and applying for food stamps. At some point, Father, who was struggling with depression, began testing positive for marijuana and stopped attending sessions with his Fatherhood Engagement provider. On December 13, 2019, DCS filed a motion to extend the trial home visit, noting that while Father continued to test positive for marijuana, Father's grandmother and her boyfriend were meeting Child's needs.

[8] DCS eventually became concerned that Father might be selling illegal drugs and stealing from his grandmother's home to obtain money for drugs. Father also began testing positive for methamphetamine. Father requested, and a service provider agreed to complete an assessment for, a specific drug-treatment program. Father, however, thereafter refused to participate in the requested services.

[9] On December 27, 2019, police began investigating Father's alleged participation in a shooting in Terre Haute. The juvenile court ended Child's home visit with Father on December 31, 2019. Father was arrested on, *inter alia*, attempted murder charges on January 6, 2021. He remained incarcerated while awaiting trial throughout the remainder of the underlying proceedings. The permanency plan was later changed to adoption due to Father's inability to maintain sobriety and continued criminal behavior.

[10] On January 28, 2020, DCS filed a petition to terminate Father's parental rights to Child. The juvenile court conducted an evidentiary hearing on DCS's petition on June 21 and 22, 2021. During the evidentiary hearing, DCS

presented evidence outlining Father's continued use of illegal drugs, failure to complete court-ordered and requested services, and ongoing criminal behavior. The juvenile court entered a written order terminating Father's parental rights to Child on June 29, 2021.

Discussion and Decision

[11] The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005).

Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[12] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes

findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[13] In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[14] In challenging the juvenile court's order, Father contends that the evidence is insufficient to sustain the termination of his parental rights to Child. In order to support the termination of Father's parental rights to Child, DCS was required to prove the following:

(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....

(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). Father argues that the evidence is insufficient to prove subsection (B). We will therefore limit our review to that subsection.

[15] In challenging the sufficiency of the evidence to support the termination of his parental rights, Father contends that “[the juvenile] court’s findings, that there is: (1) a reasonable probability that the conditions which resulted in [Child’s] removal will not be remedied; and (2) a reasonable probability that continuation of the parent-child relationship poses a threat to [Child’s] well-being, are clearly erroneous.” Appellant’s Br. p. 16. It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court’s determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

[16] In this case, Child was removed from Parents' care in April of 2015, due to Mother's drug use and unstable living conditions and Father's incarceration for a case involving arson and burglary. The juvenile court denied a prior petition to terminate Father's parental rights, finding that DCS had failed to present sufficient evidence relating to Father and given Father's ability to remain drug free while incarcerated, his willingness to participate in services, and ability to parent Child upon his release. With regard to Father's actions following his release, the juvenile court found as follows:

13. After being released from prison in February of 2019, [Father] completed the Fatherhood Engagement program, was testing clean on his drug screens and making his visits with [Child]. By July, 2019, he had progressed to the point of having [Child] come to live with him on a trial home visit.

15. In the summer and fall of 2019, the progress report that was admitted into evidence showed that Father was unemployed and living with his grandmother, attempting to get food stamps, and having struggles with depression. He also consistently began testing positive for marijuana and stopped attending sessions with his Fatherhood Engagement provider. He had two or three jobs, but was fired from one and quit another.

16. On December 13, 2019, a motion to extend the trial home visit was filed with the court. The motion stated:

1. Father has continued to test positive for low levels of marijuana throughout the trial home visit, however child's needs were met by his grandmother and her boyfriend as they reside in the same home.

2. Since that time concerns were raised that father may be selling illegal drugs, and stealing items from his grandmother's home to sell for money to buy drugs.
3. Father is now requested to complete an SUD assessment due to said concerns and the referral was accepted by Hamilton Center. Father is yet to schedule and complete the assessment.
4. Recently, Father tested positive for amphetamine and methamphetamine.
5. DCS is requesting the Trial Home Visit be extended for an additional 3 months to allow the children to remain in the home while services are provided to work toward reunification and a successful resolution to this matter.

The motion was granted to extend the trial home visit.

17. The evidence at the termination fact-finding hearing was that Father refused to participate in further services as required by the order extending the trial home visit.

18. The trial home visit was failed by order dated December 31, 2019. However, the Terre Haute Police Department was already investigating a shooting that occurred in a home on December 27, 2019, which investigation led to the arrest of [Father] for attempted murder, aggravated battery, and possession of a handgun by a serious violent felon. Those charges are pending in Vigo Superior Court Div. 3 under Cause No. 84D03-2001-F1-26. A jury trial date has been set for December 14, 2021.

23. It is worth noting that the Covid pandemic has caused a delay in this fact-finding hearing being held.... [Child] deserves

permanency and cannot wait forever. The time for achieving reunification has come and gone.

Appellant's App. Vol. II pp. 82–84 (italics omitted). Based on these findings, the juvenile court concluded that there is a reasonable probability that the conditions leading to Child's removal from and continued placement outside Father's care would not be remedied.

[17] Father does not challenge any of the juvenile court's findings. The findings, therefore, "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). The juvenile court's findings demonstrate that Father has been given multiple opportunities to complete services and to remedy the conditions that resulted in Child's removal from his care. The findings further demonstrate that although Father refrained from using drugs for a short period, he subsequently relapsed and has also failed to refrain from committing criminal acts, currently standing accused of attempted murder.

[18] Based on the record before us, we conclude that DCS presented sufficient evidence to prove that the conditions that resulted in Child's removal from and continued placement outside of Father's care will not be remedied. Father's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[19] The judgment of the juvenile court is affirmed.

Crone, J., and Tavitas, J., concur