

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
P.A. (Minor Child) and B.A.
(Father) and T.M. (Mother)

B.A. (Father) and
T.M. (Mother),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

April 17, 2023

Court of Appeals Case No.
22A-JT-2563

Appeal from the
Madison Circuit Court

The Honorable
Stephen J. Koester, Judge

The Honorable
T. Grey Chandler, Magistrate

Trial Court Cause No.
48C02-2206-JT-82

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] B.A. (“Father”) and T.M. (“Mother”) (collectively, “Parents”) appeal the termination of their parental rights to their son, P.A. (“Child”). We affirm.

Facts and Procedural History

- [2] Mother is the biological mother of Child, born in February 2018. Father is Child’s legal father.¹ In March 2019, Mother was arrested after illegal drugs and paraphernalia were found in her home. At the time, Father was incarcerated after he violated a no-contact order Mother had against him. One-year-old Child was placed in foster care, where he has since remained. Later that month, the Department of Child Services (DCS) filed a petition alleging Child was in need of services (CHINS). The trial court adjudicated Child a CHINS after Mother admitted he was a CHINS and Father waived the fact-finding hearing. The court ordered Parents to, among other things, complete substance-abuse

¹ Father signed a paternity affidavit soon after Child’s birth establishing him as the legal father. A later paternity test revealed Father is not Child’s biological father.

assessments and any recommended treatment, attend supervised visitation, and participate in any other DCS-recommended services.

[3] For the next three years, Parents partially complied with the case plan. Both were consistent with supervised visitation. Mother initially participated in substance-abuse treatment and counseling, but her attendance was inconsistent, leading her to be unsuccessfully discharged multiple times. She also frequently failed to submit required drug screens. DCS recommended that she take domestic-violence classes due to past domestic violence between her and Father. But her attendance was “spotty,” and she did not complete the class. Tr. p. 32.

[4] Father completed a substance-abuse assessment, which recommended he participate in individual therapy and family counseling. However, he was unsuccessfully discharged from individual therapy for poor attendance and did not progress to family counseling. He also completed a Batterer’s Intervention program, although the program provider then recommended Father take additional courses because he did not appear to be applying what he learned in the program to his daily life. Father refused to take the additional courses. At supervised visitation, he was “confrontational” and “aggressive” with visit supervisors and would not abide by visit rules, such as not talking to Child about the CHINS case or talking poorly about Mother. *Id.* at 42. In December 2021, Father and the visit supervisor had a “verbal altercation” after Father reacted negatively to Child referring to his foster parent as “dad.” *Id.* at 109, 110. Around this time, Child began experiencing “emotional dysregulation after

visits,” and visits were suspended on the recommendation of his therapist and the visit supervisors. *Id.* at 38.

[5] In June 2022, DCS petitioned to terminate Parents’ rights. The termination hearing occurred in September. At the hearing, DCS moved to admit the “certified [c]ourt records for the underlying CHINS case.” *Id.* at 25. Parents objected as to “any hearsay contained in any of those documents,” and the trial court stated it would admit the documents “but not . . . for any hearsay that’s contained” within. *Id.*

[6] Family Case Manager (FCM) Andrea Dickerson testified as to Mother’s non-compliance with services, including those for substance abuse and drug screens. She also testified as to Father’s supervised visitation, noting he was aggressive and confrontational with supervisors. She stated one of DCS’s major concerns with Father was “he admitted that he would not restrict [Mother’s] access [to Child] and that he had no concerns for her substance abuse.” *Id.* at 51. Mother testified and confirmed she had not consistently submitted drug screens to DCS as required by the dispositional order. She admitted she had used cocaine in November 2021 and marijuana within a month of the hearing. She also stated that she was currently homeless, she could not provide proof of employment, and her plan after the hearing was to move to Pennsylvania because she needed to live in a place where marijuana is legal.

[7] Father testified that he has lived “off and on” with his parents for the last ten years and does not pay rent. *Id.* at 138. Father also testified that on one of his

last visits with Child, Child referred to his foster parent as “dad,” and Father told him “nobody else is [your] dad but me.” *Id.* at 109. This led to a verbal “altercation between [Father] and . . . the visit supervisor.” *Id.* at 107. When asked about his willingness to limit Mother’s access to Child, Father stated that he would not let Child be around Mother if he “knew that she was actively using harmful substances.” *Id.* at 123. At one point, when testifying as to his current relationship with Mother, Father stated that he was “plead[ing] the fifth” and gave inconsistent answers, including once saying she had lived with him until two months ago, and after being confronted with contradicting evidence, saying it had been as recent as two weeks ago. *Id.* at 127.

[8] Following the hearing, the trial court issued an order terminating Parents’ rights. In its findings, the court stated,

[Father’s] inconsistent testimony at trial about how long and when [Mother] lived with him and his parents, and the non-verbal interactions between [Father] and [Mother] during the trial, suggests that [Father] was attempting to conform portions of his testimony to benefit [Mother], to the point of dishonesty, and calling into question the veracity of [Father’s] other testimony.

Appellants’ App. Vol. II p. 3.

[9] Parents now appeal.

Discussion and Decision

[10] Parents argue the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[11] A petition to terminate parental rights must allege, among other things:

(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 the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

I. Findings of Fact

[12] Parents first argue that three of the trial court's findings of fact are based on inadmissible hearsay contained in documents from the underlying CHINS case. The trial court admitted these documents but noted it would not consider any hearsay contained within. Parents contend the trial court nonetheless relied on hearsay within the documents to make the following findings:

13. Included among the orders which Mother, over a period of over three years, failed to successfully accomplish were to:

e. Complete a drug/alcohol assessment and follow all recommendations;

f. Submit to random drug screens upon request;

i. Abstain from use of illegal drugs;

16. Mother has been offered random substance abuse screens through two providers but has repeatedly failed to submit screens to validate and support her sobriety.

31. Even after completing [Batterer's Intervention program], [Father] exhibited confrontational, aggressive behavior with [the] visit supervisor when he was frustrated with the redirection of his non-compliance with visitation expectations and boundaries.

Appellants' App. Vol. II pp. 9-10.

[13] Parents offer no support for their assertion that the trial court considered hearsay within the admitted documents to produce these findings. Admissible evidence was provided supporting each of these findings, specifically testimony given at trial. As to the findings on Mother's drug use, FCM Dickerson testified that Mother failed to consistently submit drug screens, and Mother herself testified that she had not been submitting drug screens to DCS in the months leading up to the termination hearing. Mother also testified that she failed to abstain from the use of illegal drugs, stating she had used cocaine within the last year and marijuana a month before the hearing. As to Finding 31, FCM Dickerson testified that Father was aggressive and confrontational with visit supervisors. Father himself testified as to a specific incident between him and

the supervisor. Thus, Parents have failed to show the trial court considered any inadmissible hearsay.

[14] Additionally, Parents challenge many of the trial court's findings. But Parents do not argue these findings are erroneous or unsupported by the evidence. Rather, they challenge the weight the trial court gave the evidence or argue the court should have considered other, more favorable evidence. For example, Parents challenge Findings 32 and 33, which state Father resides with his parents and does not pay rent. Parents do not argue these are inaccurate; rather, they argue these facts "do not impugn [Father's] capabilities." Appellants' Br. p. 20. They also challenge Finding 36, which states Father is inconsistent in paying child support for his other children, a fact he himself testified to. *See* Tr. p. 125. Parents argue this finding is irrelevant. In total, Parents challenge twenty-one of the court's findings, all in a similar manner. *See* Appellants' Br. pp. 19-22. These are requests to reweigh evidence, which we do not do. *See In re K.T.K.*, 989 N.E.2d at 1229.

II. Legal Conclusions

[15] Parents next challenge the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re*

K.T.K., 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[16] Child was removed from Parents’ care due to their incarceration, substance abuse, and inability to provide Child with a safe and stable home. Many of these conditions did not improve during the three-and-a-half-year CHINS case. Mother did not consistently participate in substance-abuse services, refused to consistently submit drug screens to DCS, and admitted using illegal drugs throughout the CHINS proceedings. She also failed to complete a domestic-violence class. Nor could Mother provide a home for Child, as at the time of the termination hearing she had no home, no proof of employment, and was planning to move to Pennsylvania so she could legally smoke marijuana.

[17] Father similarly failed to complete services recommended by DCS. He completed a substance-abuse assessment but did not complete the individual therapy or family counseling recommended. He also completed a Batterer’s Intervention program, but the service provider recommended he take additional classes because he did not appear to be applying the program’s lessons in his life. Father refused to continue in the program. He was confrontational and aggressive with visit supervisors, leading to visits with Child being suspended. Furthermore, both DCS and the trial court expressed concerns over Father’s unwillingness to limit Mother’s access to Child in the event she was using

illegal substances. Father told DCS he would not restrict Child's access and told the trial court he would only do so if he believed she was taking "harmful" substances. The trial court also noted Father gave inconsistent testimony about Mother's living situation, attempted to communicate with her during his testimony, and appeared to try to conform his testimony to match hers, which called into question the veracity of his statements. This is sufficient evidence that Parents are not any closer to providing Child with a safe and stable home.

[18] The trial court did not err when it concluded there is a reasonable probability the conditions leading to Child's removal will not be remedied.²

[19] Affirmed.

Tavitas, J., and Foley, J., concur.

² Parents also challenge the trial court's conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child's well-being. But because we affirm the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find that only one of the requirements has been established by clear and convincing evidence), *trans. denied*.