

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Antonio G. Sisson
Muncie, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
Ja.R. (Child) and J.R. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

February 15, 2023

Court of Appeals Case No.
22A-JT-02185

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

Trial Court Cause No.
18C02-2203-JT-13

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] J.R. (“Father”) appeals the involuntary termination of his parental rights to Ja.R. (“Child”). Father presents multiple arguments for our review, which we restate as:

1. Whether the trial court’s findings support its conclusions that the conditions under which Child was removed from Father’s care would not be remedied or the continuation of the Father-Child relationship poses a threat to Child’s well-being; and
2. Whether the trial court’s findings support its conclusion that termination of Father’s parental rights is in Child’s best interests.

We affirm.

Facts and Procedural History

[2] Child was born to Father and J.G. (“Mother”)¹ on January 4, 2011. On May 13, 2011, the Department of Child Services filed a petition alleging Child was a Child in Need of Services (“CHINS”).² The same day, Mother filed a paternity action against Father. On August 4, 2011, Father executed a paternity affidavit concerning Child. On December 14, 2011, the trial court closed the CHINS matter. The next day, Father was awarded primary custody of Child in the

¹ Mother voluntarily terminated her parental rights to Child. She does not participate in this appeal.

² The record does not indicate the facts that precipitated this petition.

paternity case. However, a family friend, P.V., testified he cared for Child “off and on since she was a baby” because Child’s Mother and Father were often overwhelmed by parenting, “so [he] would take [Child] home” with him. (Tr. Vol. II at 84.) On January 28, 2014, Father and Child were the subject of an informal adjustment with DCS. Father and Child were discharged successfully from the informal adjustment on July 7, 2014.

[3] At some point after Child’s birth, Father married R.R., with whom he had two children, Jy.R., born February 22, 2016, and Ju.R., born January 11, 2018. On April 2, 2018, DCS filed a petition alleging Jy.R. and Ju.R. were CHINS and they were subsequently adjudicated CHINS. On August 16, 2019, DCS filed a petition to terminate Father’s parental rights to Jy.R. and Ju.R. During the termination proceedings in the case involving Jy.R. and Ju.R., Father ran from the courtroom and climbed atop a nearby train “in protest of the actions the Department of Child Services and the juvenile Court.” (App. Vol. II at 76) (formatting in original). Police were called to remove him from the train, and Father resisted. Based thereon, the State charged Father with Class A misdemeanor resisting law enforcement.³

[4] On September 16, 2019, Father pled guilty to Level 6 felony operating a vehicle after being adjudicated a habitual traffic offender,⁴ and the trial court sentenced

³ Ind. Code § 35-44.1-3-1(a).

⁴ Ind. Code § 9-30-10-15(a).

him to one year in jail, with credit for time served and the remainder of his sentence suspended. On March 29, 2020, police arrested Father after he stole a box truck and led police on a chase. Based on that incident, the State charged Father with Level 6 felony operating a vehicle as a habitual traffic offender, Level 6 felony auto theft,⁵ and Level 6 felony resisting law enforcement.⁶ On June 11, 2020, the trial court terminated Father's parental rights to Jy.R. and Ju.R. On October 19, 2020, Father pled guilty to the charges related to the March 29 box truck theft, and the trial court sentenced him to an aggregate sentence of one year. During these times, Child primarily lived with P.V., who testified, "like every time [Father] went to jail, [Child] stayed with me." (Tr. Vol. II at 86.)

[5] On June 1, 2021, Child was in Father's care when Father's house caught fire.⁷ When police arrived on the scene, they spoke with Father's sister, Je.R. She advised police that Father "ha[d] been having some mental health issues and advised he possibly has schizophrenia." (Ex. Vol. I at 221.) Police decided to take Father to the hospital for an "Immediate Health Detention." (*Id.*) Police called DCS because Father could not care for Child from the hospital. DCS arrived on the scene and spoke with Child's grandmother, who indicated P.V.

⁵ Ind. Code § 35-43-4-2(a)(1)(B).

⁶ Ind. Code § 35-44-1-3-1(c)(1).

⁷ It is unclear how the fire started. Father told police "he was smoking a cigarette and had put it in the corner of the residence and the house then caught on fire." (Ex. Vol. I at 221.) However, at the fact-finding hearing Father testified "according the fire investigators [sic] report, it was deemed a [sic] electrical fire." (Tr. Vol. II at 135.)

“had been taking care of [Child] for most of her life.” (*Id.*) DCS transported Child to P.V.’s house, where she has remained ever since.

[6] At the hospital, Father tested positive for methamphetamine. When interviewed by medical personnel in the emergency room, Father indicated he “was not clear about how he ended up in the hospital.” (*Id.* at 234.) The hospital released Father into police custody. The State subsequently charged Father with Level 6 felony neglect of a dependent.⁸

[7] On June 2, 2021, DCS filed a petition alleging Child was a CHINS based on the house fire, Father’s incarceration, Father’s history of substance abuse and mental illness, and Mother’s inability to take custody of Child. On August 12, 2021, the trial court held a fact-finding hearing during which Father admitted Child was a CHINS. The trial court issued its order adjudicating Child as a CHINS on August 18, 2021.

[8] On September 7, 2021, DCS filed a motion asking the trial court to find that reasonable efforts to reunify Father and Child were not required based on the fact that Father’s parental rights had been terminated to Jy.R. and Ju.R.⁹ On September 13, 2021, the trial court held its dispositional hearing. The trial court entered its dispositional order on September 23, 2021. On October 22,

⁸ Ind. Code § 35-46-1-4(a)(1).

⁹ Indiana Code section 31-34-21-5.6 allows the trial court to make a finding at any time during a CHINS proceeding that reasonable efforts to reunify a child with that child’s parent are not required under certain circumstances. One circumstance is if the parental rights “of a parent with respect to a biological or adoptive sibling of child” have been previously terminated. Ind. Code § 31-34-21-5.6(b)(4)(A).

2021, the trial court held a hearing on DCS's request that the trial court find that reasonable efforts were not required to reunify Father and Child. On December 13, 2021, the trial court granted DCS's motion.

[9] Even though DCS was not required to do so, DCS arranged for Father to receive fatherhood engagement and case management services from July 2021 until December 2021. Father did not successfully complete services because he was moved from the Delaware County Jail to the Henry County Jail. Additionally, DCS facilitated supervised visitation between Father and Child "on the tablet[.]" (Tr. Vol. II at 123.) Father visited with Child "as often as we could. Numerous times a week until they said that we weren't allowed anymore." (*Id.*) DCS later discovered some of those visits were unsupervised and suspended visits until DCS or the Court Appointed Special Advocate ("CASA") created a plan for supervised phone contact.

[10] On December 20, 2021, the trial court held a permanency hearing and changed Child's permanency plan to adoption by P.V. because DCS was not required to provide reunification services and Father had not complied with Child's case plan. On March 14, 2022, DCS filed a petition to terminate Father's parental rights to Child. The trial court held fact-finding hearings on the termination petition on May 26, 2022, and July 14, 2022.

[11] During the July 14, 2022, hearing, Father was not initially present. Father's counsel was present and did not request a continuance to determine Father's location. The trial court held the fact-finding hearing, the State presented

evidence, and Father's counsel was able to make objections to the admission of evidence and cross-examine all witnesses. At the end of the hearing, courthouse security advised the trial court that Father was present in the courthouse. Father's counsel moved for a mistrial. The trial court denied the motion for mistrial but reopened the record to hear Father's testimony. On August 22, 2022, the trial court issued its order terminating Father's parental rights to Child.

Discussion and Decision

[12] Father argues the trial court's findings do not support its conclusions and the termination of his parental rights.¹⁰ We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only

¹⁰ Father also argues the trial court violated Father's due process rights under the United States and Indiana constitutions when it held the July 14, 2022, fact-finding hearing despite Father's absence. However, Father does not make a cogent argument or cite case law regarding this issue, and thus the issue is waived. See Indiana Appellate Rule 46(A)(8) (arguments on appeal must contain cogent argument); and see *In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to make a cogent argument waives issue from appellate consideration), *trans. denied*.

Waiver notwithstanding, it is well-established that a parent has "no absolute right" to attend a termination fact-finding hearing. See *In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011) ("there is no absolute right to be present at a termination hearing"). Father's counsel was present at the fact-finding hearing, could object to and present evidence, and could cross-examine witnesses and, after the trial court realized Father was present in the courthouse, the trial court reopened the evidence upon agreement by the parties to allow Father to testify. In such circumstances, Father's due process rights were not violated when the trial court held the July 14, 2022, fact-finding hearing in his absence. See *In re E.E.*, 853 N.E.2d 1037, 1044 (Ind. Ct. App. 2006) (parent's due process rights not violated when parent is represented throughout the proceedings by counsel and counsel attends hearing and has opportunity to cross-examine witnesses and offer argument), *trans. denied*.

the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied* 534 U.S. 1161 (2002).

[13] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[14] 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 G. Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g 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. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

1. Conditions Under Which Child Was Removed Would Not Be Remedied

[15] Father argues the trial court’s conclusion that the conditions under which Child was removed from his care would not be remedied is not supported by the trial

court's findings. The trial court must judge a parent's fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services "demonstrates the requisite reasonable probability" that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Father does not challenge any of the trial court's findings and thus they "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[16] The trial court's findings relevant to its conclusion the conditions under which Child was removed from Father's care would not be remedied state:

9. The Indiana Department of Child Services ("DCS") has an extensive history with Father and [Child] dating back to August 2011 involving drug use, mental health issues and domestic violence.

10. DCS became involved with the family for the underlying CHINS case when it was reported to DCS on or about June 2, 2021, that police were called to the home of Father for a fire wherein [Child] was present.

11. Father was taken by police from the fire to the Ball Memorial Psychiatric Unit and diagnosed with "methamphetamine use; psychosis, arson and medical screening for incarceration" after the fire incident.

12. Father was arrested and charged with Neglect of a Dependent with the named dependent being [Child] for the fire incident.

13. Father's mother was present at Ball Memorial Hospital and identified family friend [P.V.] who was also at the hospital as the appropriate care giver and placement for [Child].

14. The Department of Child Services removed [Child] from Father and placed her with [P.V.] with whom she had a pre-existing and long-standing custodial relationship.

15. DCS had extensive prior history with the Father. Most recently, the Department concluded CHINs cases for two children of Father who are younger than [Child].

16. The CHINS case for [Child's] siblings ultimately ended with the termination of parental rights which was affirmed by the Court of Appeals and their subsequent adoption.

17. During the termination of parental rights cases for [Child's] siblings, Father climbed on a train, still on the tracks, across from the juvenile courtroom and had to be removed from the train by law enforcement officers in protest of the actions of the Department of Child Services and the juvenile Court.

18. A Petition Alleging Child in Need of Services was first filed for [Child] on May 13, 2011, when she was 3 months old and closed on December 14, 2011.

19. [Child] was born while Father was married to [B.B.R.]. [B.B.R.] and Father had a child 2 months before [Child] was born named [B.R.] on 11/17/2010.

20. Father subsequently divorced [B.B.R.] and moved to Randolph County. Father became involved with the DCS through an Informal Adjustment with [Child].

21. Thereafter, Father began a relationship with [R.R.], and they had two children, [Ju.R.] and [Jy.R.].

* * * * *

28. Father entered into a stipulation admitting that [Child] was a child in need of services.

29. [Child] was adjudicated a child in need of services at the hearing on August 12, 2021, pursuant to the Adjudication Order entered on August 18, 2021.

30. [Child] remained placed in kinship care with [P.V.].

31. A Pre-Dispositional Report was filed on September 3, 2021, and a Dispositional Hearing was held on September 13, 2021, and the Dispositional Order was entered on September 23, 2021.

32. The Court held a hearing on October 22, 2021, on the Department of Child Services Motion for Hearing on No Reasonable Efforts Requirements.

33. The Court set a Permanency Hearing for Father, which was ultimately held on December 20, 2021, in conjunction with the previously scheduled Review Hearing. The Court entered the No Reasonable Efforts Order on December 13, 2021.

* * * * *

36. The Court further determined that Father was having unsupervised phone visits from jail with [Child]. The Court found that Father was not entitled to phone visits and DCS or CASA could request a plan for phone contact.

* * * * *

38. The Court found that the appropriate permanency plan for [Child] was for her to be placed for adoption and DCS was not required to expend reasonable efforts to reunify with Father who was incarcerated.

* * * * *

54. Family Case Manager (“FCM”) Tiffany Ford first met the family in June 2021 after the fire at Father’s home where [Child] was present.

55. FCM Ford met Father and family members at the hospital the day of the fire. [P.V.] was identified as the most appropriate caregiver for [Child] because of their long-standing relationship. No family member requested placement while at the hospital.

56. FCM Ford attended the Fact-Finding Hearing and prepared the Pre-Dispositional Report. FCM Ford put in a referral for Fatherhood Engagement services because Father was incarcerated.

57. Father did not complete Fatherhood Engagement because he was transported from the Delaware County Jail to the Henry County Jail.

58. Father has an extensive criminal history throughout [Child’s] life, including but not limited to, habitual traffic violations;

escape; resisting law enforcement, auto theft and receiving stolen auto parts, which has resulted in numerous arrests and periods of incarceration.

59. Father was arrested for the incident on the top of the train while protesting the efforts of DCS and the Court during the underlying CHINS cases involving two of his other children.

60. During 2020, Father was in and out of jail. [Child] was not in his custody during Father's incarceration despite Father's representation that he has had continuous custody of [Child].

* * * * *

62. At the Fact-Finding hearing, Father represented to have 9 children, but struggled to recall their dates of births [sic] or current locations. Father does not have custody of any of his children.

63. Father denied history of mental health issues or substance abuse despite the prior CHINS cases for [Child] and her siblings, police reports and records of his Ball Memorial psychiatric hold.

64. The week prior to the commencement of the Fact-Finding hearing in May, Father acknowledged that the paramedics were called to his home but claimed it was from dehydration from mowing the lawn.

65. The Court finds that Father is not a reliable or accurate reporter regarding either his substance abuse history or mental health history.

* * * * *

69. Father has not maintained a stable residence during [Child's] life. Father has had numerous residences in Delaware County including the Delaware County jail and the residences of various family members.

70. Father has also resided in Randolph County wherein he became involved with the Randolph County Department of Child Services through an Informal Adjustment; and has also been incarcerated in the Henry County jail during the pendency of the current CHINS case.

71. Father did not have good recall regarding his various reported addresses. This demonstrates a continued pattern of lack of stability and inability to provide a stable home environment which would be detrimental to [Child].

72. At the Fact-Finding hearing, Father was not able to provide a current stable address where he would reside if [Child] was placed in his custody.

73. The Court finds that Father's instability in housing and ability to provide a stable residence is unlikely to be remedied by Father.

(App. Vol. II at 75-80) (internal citations to the record omitted). Based thereon, the trial court concluded the conditions under which Child was removed from Father's care would not be remedied.

[17] Father argues the trial court's findings do not support its conclusion that the conditions under which Child was removed from Father's care would not be remedied, and Father offers alternate explanations for the evidence presented during the fact-finding hearing. However, the trial court found, and Father

does not challenge, that Father was frequently incarcerated during the underlying CHINS proceedings, had a history of substance abuse and untreated mental illness, and did not consistently have custody of Child. Father did not complete any services, even those provided by DCS despite an order indicating it was not required to do so. Based thereon, we conclude the trial court's findings support its conclusion that the conditions under which Child was removed from Father's care would not be remedied.¹¹ *See Matter of G.M.*, 71 N.E.3d 898, 908 (Ind. Ct. App. 2017) (holding trial court findings regarding Mother's incarceration and failure to complete services supported its conclusion that the conditions under which her child was removed from her care would not be remedied).

2. Child's Best Interests

[18] Father also contends the trial court's findings do not support its conclusion that termination of Father's parental rights was in Child's best interests. In determining what is in a child's best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence.

¹¹ 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)(B). *See, e.g., In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*.

Father also argues DCS did not present sufficient evidence to prove Child had been adjudicated a CHINS on two separate occasions, which is one of the three requirements for termination of parental rights under Indiana Code section 31-35-2-4(b)(2)(B). However, the trial court did not make such a conclusion, nor was it required to do so because, as indicated earlier in this footnote, the statute is written in the disjunctive.

In re A.K., 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports finding termination of parental rights is in the best interests of children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child's best interests. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[19] Regarding Child's best interests the trial court found:

74. [P.V.] has served as the de facto custodian of [Child] for most of her life. She has an established bedroom and study area in his home. [P.V.] testified that he has had custody of [Child] for a cumulate [sic] total of approximately 8 years of her life. The Court finds this representation to be credible.

75. CASA Volunteer Tina Yoder was appointed in the CHINS proceedings involving [Child] and was able to observe [Child] in her placement with [P.V.]. CASA supported the placement and sought per diem payment by DCS for placement.

76. The CASA volunteer was able to observe a loving and well-established relationship between [Child] and placement and opined that adoption by her current placement is in her best interest.

77. CASA reported that [Child's] grades and attendance are excellent in the care of placement. CASA noted that [Child] has

her own refurbished bedroom at the home of placement which meets all of her needs.

(App. Vol. II at 80.) When considering those findings and the findings relevant to whether the conditions under which Child was removed from Father's care would be remedied, the trial court concluded termination of Father's parental rights was in Child's best interests.

[20] Father argues termination of his parental rights was not in Child's best interests because DCS did not present evidence "that the Child's emotional, social and physical well-being has improved as a result of removal from Father's care." (Father's Br. at 24.) However, the trial court found, and Father did not challenge, that Child was doing well in her placement, where she had her own bedroom and study area; Child made good grades and had good attendance at school; and Child had a good relationship with her placement. In addition, the Family Case Manager and CASA recommended termination of Father's parental rights to Child and adoption of Child by P.V. Therefore, we hold the trial court's findings support its conclusion that termination of Father's parental rights to Child was in Child's best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (trial court's findings based on testimony of service providers coupled with evidence that conditions resulting in placement outside the home would not be remedied supported trial court's conclusion that termination was in child's best interest), *trans. denied*.

Conclusion

[21] The trial court's findings support its conclusions that the conditions under which Child was removed from Father's care would not be remedied and that the termination of Father's parental rights to Child was in Child's best interests. Accordingly, we affirm the trial court's termination of Father's parental rights to Child.

[22] Affirmed.

Mathias, J., and Bradford, J., concur.