MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:
J.C. and D.G. (Minor Children)

L.C. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

March 13, 2023

Court of Appeals Case No. 22A-JT-2231

Appeal from the Marion Superior Court

The Honorable Geoffrey A. Gaither, Judge
The Honorable Scott B. Stowers, Magistrate

Trial Court Cause Nos.
49D09-2108-JT-6817
49D09-2108-JT-6818

Memorandum Decision by Judge Weissmann
Judges Bailey and Brown concur.

Weissmann, Judge.

[1] L.C. (Father) appeals the termination of his parental rights to J.C. and D.C. (Children), challenging the trial court's finding that the conditions leading to Children's removal from Father's care were unlikely to be remedied. Children were removed due to Father's incarceration for killing Children's mother (Mother). Thereafter, Father was convicted of Mother's murder and sentenced to 60 years in prison. Finding clear and convincing evidence to support the trial court's finding, we affirm the termination of Father's parental rights.

Facts

[2] Father killed Mother on June 6, 2020. He turned himself into police the same day and was charged with murder. Father has been incarcerated ever since.

[3] At the time of Mother's death, J.C. was two years old, and D.C. was eight months old. As Father was unable to care for Children due to his incarceration, the Indiana Department of Child Services (DCS) detained Children, placed them with their maternal aunt, and filed a petition alleging Children to be children in need of services (CHINS). Father agreed to "deny and submit"[1] in the CHINS case, and Children eventually were adjudicated to be CHINS.

[1] We understand the phrase "deny and submit" to mean that Father denied the allegations of the CHINS petition but stipulated to the admissibility of the sworn statements made therein by Children's DCS Family Case Manager. *See* Exhs. p. 67.

[4] On February 1, 2022, Father was convicted of Mother's murder. A month later, he was sentenced to 60 years in prison. Father also pleaded guilty to and was convicted of Level 3 felony dealing in narcotic drugs in a separate case. For his dealing conviction, Father was sentenced to 9 years in prison, with 5 years suspended to probation, to be served consecutively to his sentence for murder. Father's projected release date is in 2068.

[5] After Father's sentencing, the trial court changed Children's permanency plan from reunification to adoption. DCS then filed a petition to terminate Father's parental rights. Relying primarily on Father's 60-year prison sentence for murdering Mother, DCS alleged the conditions leading to Children's removal from Father's care were unlikely to be remedied and that Father's continued relationship with Children posed a threat to their well-being.

[6] Father appealed his murder conviction, and that appeal was pending when the termination hearing occurred in this case. After the hearing, the trial court issued its order terminating Father's parenting rights, finding in pertinent part:

> 17. There is a reasonable probability that the conditions that resulted in the children's removal and continued placement outside of the home will not be remedied by her (sic) father. [Father] has been convicted of murdering the children's mother and will not be released for several decades.
>
> 18. The continuation of the parent-child relationship poses a threat to the children's well-being in that it would serve as a barrier for them obtaining permanency through adoption when their father is unavailable to offer permanency and parent due to his criminal behavior. [Father] has not seen the children in over two (2) years.

App. Vol. II, p. 24.

Discussion and Decision

[7] Father appeals, challenging the sufficiency of the evidence supporting the termination of his parental rights and claiming the trial court erred in not staying the termination case until the appeal of his murder conviction was resolved. Finding sufficient evidence and no error, we affirm.

I. Standard of Review

[8] A petition to terminate parental rights must allege, in relevant part:

> (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).

[9] If the trial court finds the allegations in a termination petition are true by clear and convincing evidence, the court shall terminate the parent-child relationship. Ind. Code §§ 31-35-2-8, -37-14-2. In reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). The judgment will be set aside only if it is clearly erroneous. *Id.*

II. Sufficiency of the Evidence

[10] Father argues that DCS presented insufficient evidence to support the allegations in its termination petition. Specifically, he challenges the trial court's findings that the conditions leading to Children's removal were unlikely to be remedied and that his continued relationship with Children posed a threat to their well-being. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, only one of these findings was necessary to terminate Father's parental rights. *In re S.K.*, 124 N.E.3d 1225, 1233 (Ind. Ct. App. 2019). We find the remedying conditions issue dispositive.

[11] Children were removed from Father's care due to his inability to care for them while incarcerated for allegedly murdering Mother. Father was subsequently convicted of murdering Mother and sentenced to 60 years in prison. At the time of the termination hearing, Father's projected release date was not until 2068—by which time both Children will be nearly 50 years old. Moreover, during the pendency of this appeal, Father's murder conviction was affirmed. *See L.C. v. State*, No. 22A-CR-635 (Ind. Ct. App. December 20, 2022).

[12] Father does not dispute that his 60-year prison sentence supports a reasonable probability that his incarceration would not be remedied. Rather, Father argues that the trial court should not have considered his prison sentence at all due to his pending appeal of the corresponding murder conviction. But Father stipulated to the fact that he was convicted of murdering Mother and testified, without objection, that he was sentenced to 60 years in prison. Tr. Vol. II, pp. 6, 13, 34. He also stipulated to the admissibility of the Chronological Case Summary from the murder case, which evidenced his conviction and 60-year sentence. *Id.* at 5; Exhs. pp. 86-97. As Father's prison sentence was properly admitted into evidence, the trial court did not err in considering it.

III. Alleged Failure to Stay

[13] Father also argues that the trial court should have stayed the termination case until the appeal of his murder conviction was resolved. Though Father never formally requested such a stay, his argument at the termination hearing emphasized the general possibility that his conviction might be reversed. Tr. Vol. II, pp. 53-54. On appeal, Father likewise claims: "*If the conviction is overturned* . . . a grave injustice will have been done to Father and [Children]." Appellant's Br. p. 10 (emphasis added).

[14] Because Father's murder conviction has since been affirmed—not reversed—we cannot say the trial court erred in not sua sponte staying the termination case. *See generally In re A.K.*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001) ("We

review a trial court's denial of a motion to stay under an abuse of discretion."). We therefore find no error.

[15] The judgment of the trial court is affirmed.

Bailey, J., and Brown, J., concur.