

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Michael B. Troemel
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Indianapolis, Indiana

Marjorie Lawyer-Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of: G.B. (Minor Child), and R.B.
(Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Plaintiff

January 25, 2023

Court of Appeals Case No.
22A-JT-1430

Appeal from the Tippecanoe
Superior Court

The Honorable Faith A. Graham,
Judge

Trial Court Cause No.
79D03-2111-JT-78

May, Judge.

- [1] R.B. (“Father”) appeals the involuntary termination of his parental rights to his son, G.B. (“Child”). Father argues the trial court’s findings do not support its conclusions that the conditions under which Child was removed from his care would not be remedied and that the continuation of the Child-Father relationship would be a threat to Child’s well-being. We affirm.

Facts and Procedural History

- [2] Father and A.A. (“Mother”)¹ (collectively, “Parents”) are the biological parents of Child, born January 2, 2021. Child tested positive for methamphetamine at birth. At the time of Child’s birth his two older siblings, An.A. and Gr.B., were the subjects of a Child in Need of Services (“CHINS”) case pending since 2019 (“Sibling Case”). The Department of Child Services (“DCS”) removed Child from Parents’ care on January 5, 2021, and placed him in foster care, where he has been ever since. DCS filed a petition alleging Child was a CHINS on January 6, 2021, based on Parents’ drug use and the ongoing Sibling Case.
- [3] The trial court held an initial hearing on January 12, 2021. Parents denied Child was a CHINS. The trial court set a fact-finding hearing for February 17, 2021, and rescheduled it for February 24, 2021, upon DCS’s motion. The trial court held the fact-finding hearing as scheduled, and on March 23, 2021, the trial court adjudicated Child as a CHINS. On March 26, 2021, the trial court

¹ The trial court also terminated Mother’s parental rights to Child. She does not participate in this appeal.

held a dispositional hearing on the matter. In its order issued the same day, the trial court required Father to, among other things, participate in home-based case management services; participate in individual counseling and intensive outpatient drug treatment as recommended; submit to random drug screening; and visit with Child. The trial court further stated, regarding visitation with Child:

[Parents'] parenting time^[2] may continue so long as parent(s) submits to all requested drug screens and refrains from using or testing positive for methamphetamine and/or fentanyl. Parenting time shall be immediately suspended in the event parent(s) again tests positive for methamphetamine and/or fentanyl on any subsequent drug screen at which time DCS shall submit a Status Report notifying the Court of such suspension. In such event, parenting time shall not resume until further order of the Court. Any party may file a request for hearing on such matter. Parenting time shall be immediately cancelled in the event parent(s) appears to be under the influence of any substance.

(Ex. Vol. I at 151.) Father had also been ordered to complete similar services as part of the Sibling Case.

[4] In March 2021, around the time of the trial court's dispositional order, Father attended one of four substance abuse treatment sessions. In April 2021, Father tested positive for methamphetamine several times or did not submit a drug screen when it was requested. Based on the positive drug screens, Father's

² The trial court uses the terms "parenting time" and "visitation" interchangeably.

visitation with Child was suspended. By July 2021, “Father’s contact with DCS was sporadic and Father was not participating in services.” (App. Vol. II at 20.)

[5] Father’s substance abuse counselor Heide Gregory testified Mother triggered Father’s drug use and he used drugs as a “way he could um, kind of relate to her better[.]” (Tr. Vol. II at 25.) Mother was incarcerated from July 2021 until December 2021. During that time, Father did not test positive for illegal substances. By the end of September 2021, “Father completed another substance abuse assessment, completed a psychological evaluation, and resumed parenting time.” (*Id.*) Despite this progress, Father attended only one supervised visit with Child in September and one supervised visit in October.

[6] On October 19, 2021, the trial court changed Child’s permanency plan from reunification to adoption because “Father refused to participate in anger management services and had not progressed beyond fully supervised parenting time.” (*Id.*) On October 29, 2021, Father was convicted of Class B misdemeanor public intoxication.

[7] On November 2, 2021, DCS filed a petition to terminate Father’s parental rights to Child.³ Father participated in one supervised visit with Child in November, one supervised visit with Child in December, and two supervised

³ On the same day, the trial court terminated Father’s parental rights to Gr.B. as part of the Sibling Case. We affirmed the termination of Father’s parental rights in the Sibling Case. *A.A. v. Indiana Dept. of Child Servs.*, 21A-JT-2666 (Ind. Ct. App. May 9, 2022).

visits with Child in January. Father tested positive for methamphetamine on January 20, 2022, and his visits with Child therefore were stopped.

[8] Since Child was removed from Father’s care on January 5, 2021, Father tested positive for amphetamine/methamphetamine twice and methamphetamine twice. Father also did not submit to multiple drug tests. Father did not regularly attend individual therapy as recommended by DCS. When Father did attend the therapy sessions, he “reported attending only to be compliant with court orders.” (*Id.* at 23.) DCS referred Father to a program called “Abuse, Accountability, and Awareness” twice during the CHINS case. (*Id.* at 25.) The first time, Father reported, “he did not have time to participate[.]” (*Id.*) In October 2021, when Father attempted to complete the class the second time, he “stated the class is about why guys who beat their wife or kids and he is not okay listening to that.” (*Id.*) (errors in original).

[9] On January 26, 2022, the trial court held a fact-finding hearing on the termination petition. On February 25, 2022, the trial court held a second fact-finding hearing on the matter. On May 19, 2022, the trial court issued its order involuntarily terminating Father’s parental rights to Child.

Discussion and Decision

[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 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).

[11] “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.

[12] 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. *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 statute terminating parental rights.” *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

[13] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the

evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[14] Father does not challenge any of the trial court’s findings and thus we accept them as true. *See id.* Father argues the trial court’s findings do not support its conclusion that the conditions under which Child was removed from his care would not be remedied.⁴ 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*. “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *In re L.S.*, 717 N.E.2d at 210.

⁴ 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 In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code Section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*. Because we hold the trial court’s findings support its conclusion that the conditions under which Child was removed would not be remedied, we need not also determine whether the trial court’s findings support the trial court’s conclusion that the continuation of the Father-Child relationship poses a danger to Child’s well-being.

[15] To support its conclusion the conditions under which Child was removed from Father's care would not be remedied, the trial court found:

3. The reasons for the [Sibling Case] involved substance abuse. Tippecanoe County Department of Child Services ("DCS") received a report on April 10, 2019 alleging neglect due to substance abuse by Mother. Investigation revealed that [Gr.B.] tested positive for methamphetamine at birth. Mother admitted using methamphetamine in the home. [An.A.] tested positive for methamphetamine on a hair drug screen collected on April 12, 2019. Father resided with Mother but denied any knowledge of Mother's substance use. Father declined a drug screen. Mother was arrested and incarcerated on April 16, 2019 for a probation violation.

4. Father progressed to a trial home visit with [Gr.B.] on November 13, 2019. However the trial home visit [was] disrupted on July 15, 2020 after Father tested positive for methamphetamine. Father admitted using methamphetamine in the home. [Gr.B.] tested positive for methamphetamine on a hair drug screen collected July 14, 2020. Mother had been released from the Department of Correction and moved into the home with Father after the trial home visit ended. Mother and Father tested positive for methamphetamine several times between July and September 2020 and failed to maintain regular contact with DCS.

5. The reasons for the second CHINS case [the case on appeal] also included substance abuse. [Child] was born during the [Sibling Case] at which time he tested positive for methamphetamine and suffered from withdrawal symptoms. Mother admitted consuming methamphetamine. Father tested positive for methamphetamine. [Child] was placed in foster care upon release from the hospital.

* * * * *

9. By March 2021, Mother and Father failed to participate in services. Mother and Father had attended only one (1) of four (4) substance abuse treatment sessions. The home tested positive for methamphetamine in April 2021 and parenting time was suspended after Mother and Father both tested positive for methamphetamine.

10. [Parents] failed to regularly submit to drug screens after April 2021. By July 2021, Mother had failed to maintain contact with DCS. Father's contact with DCS was sporadic and Father was not participating in services. By the end of September 2021, Mother was incarcerated on outstanding warrants. Father completed another substance abuse assessment, completed a psychological evaluation, and resumed parenting time.

11. A permanency hearing was held on October 19, 2021 at which time the permanent plan for [Child] was determined to be adoption. DCS was authorized to initiate proceedings for termination of parental rights. Mother was incarcerated and had not progressed beyond fully supervised parenting time. Father refused to participate in anger management services and had not progressed beyond fully supervised parenting time. DCS filed [a] Verified Petition for Involuntary Termination of Parent-Child Relationship as to [Child] on November 2, 2021. The evidentiary hearing commenced on January 26, 2022 and concluded on February 25, 2022.

* * * * *

24. Father reported living on his own since age sixteen (16). Father dropped out in ninth grade but obtained his high school equivalency diploma in 2001. During the CHINS case, Father was generally employed. Father worked as a roofer for many

years, painted college dorms part-time for a period, occasionally worked side jobs for extra income, and has most recently worked at Service Master for about four (4) weeks. Father does not have a valid driver's license but continues to drive. Father has at least nineteen (19) small claims cases against him. Father was evicted in March 2019 but obtained new housing in June 2019. Father made arrangements for the home to be professionally cleaned around June/July 2021 after it tested positive for methamphetamine. At the time of the termination hearing, Father had been employed about five (5) months at a heating and cooling company and was current on lot rent for [Parents'] mobile home which was being remodeled by Father.

25. Father's criminal history includes Operating While Intoxicated (1995), Theft (2000), Receiving Stolen Property (2000), Robbery (July 2000), Criminal Confinement (2000), and Domestic Battery (2001). Father was sentenced to incarceration at DOC [Department of Correction] for eight (8) or ten (10) years for Robbery (December 2000) and was released from parole in 2009. Father was convicted of Operating While Suspended (Class A Misdemeanor) on multiple occasions including November 1987, January 1992, August 2000, March 2010, March 2013, November 2015, January 2017, June 2017, August 2019, September 2019, and January 2020. Father was convicted of Public Intoxication (Class B Misdemeanor) on October 29, 2021.

26. Father reported completing anger management, parenting classes, substance abuse [classes], and lifestyle changes classes at DOC.

27. Father completed a clinical interview and assessment in July 2019. Father has four (4) prior born children, AB (29 YOA), DB (27 YOA), SB (11 YOA), and JB (9 YOA). The mother of the oldest two (2) was also involved with methamphetamine. AB was involved with DCS and lost custody of her own children.

The younger two (2) reside with their mother. Father was dishonest regarding his criminal history. Father reported an intent to file bankruptcy. It was recommended that Father complete a substance abuse evaluation, parenting assessment, and psychological evaluation. Father failed to timely complete a psychological evaluation as recommended. It was also recommended that Father participate in case management, individual therapy, and random drug screens.

* * * * *

31. Prior to the [Sibling Case], Father completed outpatient substance treatment once or twice. During the [Sibling Case], Father did not begin recovery coach services until March 2021. Father understood the transferability and danger of methamphetamine use. Father admitted relapsing on methamphetamine in April 2021. Father admitted prior use of substances and eventually completed a recovery plan before discharge in July 2021 for lack of attendance.

32. Father completed a third, self-report substance abuse assessment in September 2021. Father identified Mother as a trigger. Father confirmed Mother's active addiction and reported his drug use generally occurred with Mother. Father reported using drugs with Mother as an attempt to relate to Mother better. Father reported a belief that his older children would not be returned to his care and dedication to working toward reunification with [Child]. Father was very agitated and angry on the second day of the assessment. It was recommended that Father participate in Character Restoration (aka Abuse, Awareness, and Accountability) and ongoing individual counseling on the condition Father distance himself from Mother and submit to regular drug screens with negative results. If unable to meet those conditions, it was recommended that Father participate in intensive outpatient services (IOP). Father has not separated himself from Mother.

33. During the [Sibling Case] and [the case on appeal], Father tested positive for amphetamine/methamphetamine on 07/08/2020, 07/24/2020, 9/22/2020, 9/23/2020, 10/14/2020, 11/10/2020, 11/18/2020, 11/19/2020, 4/16/2021, and 4/23/2021. Father tested positive for methamphetamine on 06/03/2019, 07/14/2020, and 06/21/2021. Father tested positive for cocaine on 06/24/2019, for buprenorphine on 10/07/2020, and for alcohol on 07/16/2020, 08/16/2020, 09/22/2020, 01/04/2021, 02/12/2021, 02/23/2021, 02/26/2021, 03/02/2021, 03/09/2021, 03/17/2021, 03/18/2021, 03/22/2021, 03/26/2021, 03/29/2021, and 03/31/2021. When Mother was incarcerated, Father tested negative on drug screens between July 2021 and December 2021. Father reported using methamphetamine four (4) months ago. However, Father tested positive for methamphetamine on a hair drug screen collected 01/20/2022. Father took a few drug screens thereafter which returned negative. Father failed to take all drug screens as requested.

34. Father completed intake for weekly individual therapy in July 2020 attending one (1) session in August 2020, one (1) session in September 2020, five (5) sessions in October 2020, four (4) sessions in November 2020, four (4) sessions in December 2020, and two (2) sessions in January 2021. Father continued to deny drug use as a problem throughout therapy despite repeated positive drug screens for methamphetamine.

35. Father was referred for individual counseling again in October 2021. Father attended approximately two (2) sessions. Father reported attending only to be compliant with court orders. Father stated he did not feel his children would be returned to his care. No progress was made in therapy. Father failed to attend three (3) subsequently scheduled sessions without notice and was discharged from counseling services in late December 2021/early January 2022. Father does not believe he needs counseling.

36. Father was referred for Abuse, Accountability, and Awareness. Father attended only two (2) sessions. Father reported he does not have enough time to participate. Father also failed to complete the program in October 2021 as ordered in a criminal case. Father stated the class is about why guys who [sic] beat their wife or kids and he is not okay listening to that.

37. After the trial visit with [Gr.B.] [was] disrupted, Father commenced supervised parenting time. Father's parenting time was suspended around July 2020 due to testing positive for methamphetamine. Father's parenting time resumed around November 2020 but was suspended again in April 2021 after Father relapsed on methamphetamine. Father refused virtual visits reportedly due to [Child's] age. Father failed to attend any visits between May 2021 and August 2021.

38. Father attended supervised parenting time once in September 2021 and once in October 2021. Father was scheduled for supervised parenting time twice in November 2021. Father attended one (1) visit successfully but the second visit was cancelled due to Father failing to provide necessary formula. Father demonstrated an ability to meet basic needs and no safety concerns were noted during those visits. However, a bond was not observed during those visits. [Child] cried often and Father struggled to console [Child].

39. Subsequently, Father attended supervised visits on November 16, 2021 and December 7, 2021. Father also attended a supervised visit on December 16, 2021 before taking a trip to Texas to visit family. Father thereafter attended supervised visits on January 3, 2022 and January 11, 2022. There were no reported safety concerns during said visits. [Child] consistently cried for the first ten (10) minutes of those visits. There was no bond observed between Father and [Child]. Thereafter, Father was unsuccessfully discharged from visitation services after testing positive for methamphetamine on January 20, 2022.

(App. Vol. II at 20-25.) Based thereon, the trial court concluded, in relevant part:

1. There is a reasonable probability the conditions that resulted in removal of [Child] from the care of [Parents] or the reasons for continued placement outside the home will not be remedied. Neither parent has demonstrated the ability or willingness to make lasting changes from past behaviors. There is no reasonable probability that either parent will maintain sobriety and stability to care and provide adequately for [Child].

(*Id.* at 25.)

[16] Father makes several arguments about other findings the court could have made based on the evidence provided to the trial court. First, Father contends it was Mother's use of methamphetamine that resulted in Child's removal and Child was removed from Father's care "before [F]ather ever had access to his son." (Br. of Appellant at 13.) Further, Father asserts he did not use methamphetamine consistently and "DCS failed to provide evidence as to how [F]ather's occasional drug use disqualified him as a caregiver." (*Id.*) Additionally, to that point, Father argues,

there was no evidence of even one incident where [Father] endangered his children due to drug use. He never left them unattended, never exposed them to domestic violence, and never drove erratically with them. There was no evidence he was ever even with his children while under the influence of drugs.

(*Id.* at 13-4.) Father also argues some providers "stated there was no safety issue for [Father] being around his son" and "he was self-sufficient, able to

work and provide for his son.” (*Id.* at 14.) Finally, Father asserted, “the state’s evidence does not justify the drastic remedy of termination.” (*Id.*)

[17] However, Father’s arguments ignore the trial court’s findings that support its conclusion regarding the conditions under which Child was removed from his care. The trial court found Child was removed from Parents’ care because he was born addicted to methamphetamine and Father did not submit a negative drug test.⁵ Throughout the case, Father tested positive for methamphetamine, amphetamine, and cocaine. Father also missed several random drug screenings. On January 20, 2022, less than a week before the trial court’s fact-finding hearing, Father tested positive for methamphetamine.

[18] Further, while some providers may have noted a positive relationship between Father and Child, the trial court found Father missed several supervised visits, Father did not bring proper food to one visit, Child regularly cried for a portion of the visits, Father was unable to soothe Child, and Father did not have a bond with Child. Finally, while it may be true Father was relatively self-sufficient, there were services he made very little effort to complete, such as individual therapy and substance abuse rehabilitation, which calls into question whether Father can provide the stability needed to raise a young child. Based thereon, we hold the trial court’s findings support its conclusion that there existed a

⁵ Finding 3 of the trial court’s order indicates Father “declined” a drug test at the time of Child’s removal and Finding 5 indicates Father “tested positive” for methamphetamine at the time of Child’s removal. (App. Vol. II at 20.) Either way, he did not test negative for illegal substances.

reasonable probability that the conditions under which Child was removed would not be remedied. *See In re E.M.*, 4 N.E.3d 636, 644 (Ind. 2014) (findings regarding father's continued non-compliance with services support trial court's conclusion that conditions resulting in children's removal from father's care would not be remedied).

Conclusion

[19] The trial court's findings support its conclusion the conditions under which Child was removed from Father's care would not be remedied. Accordingly, we affirm the termination of Father's parental rights to Child.

[20] Affirmed.

Crone, J., and Weissmann, J., concur