MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark A. Thoma
Leonard, Hammond, Thoma & Terrill
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Frances Barrow
Robert J. Henke
Deputy Attorneys General

Stephen Thomas Morris
Certified Legal Intern
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of: V.A. (Minor Child), and

K.A. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

January 31, 2022

Court of Appeals Case No. 21A-JT-1553

Appeal from the Allen Superior Court

The Honorable Lori K. Morgan, Judge

Trial Court Cause No. 02D08-2010-JT-286

Brown, Judge.

[1] K.A. ("Father") appeals the involuntary termination of his parental rights to his child, V.A. We affirm.

Facts and Procedural History

[2] At some point, Father and T.A. ("Mother") were married and on June 16, 2016, Mother gave birth to V.A. On September 5, 2017, the Indiana Department of Child Services ("DCS") filed an amended petition alleging V.A. to be a child in need of services ("CHINS"). DCS alleged that Father and Mother brought V.A. to Parkview Hospital in Fort Wayne on August 16, 2017, V.A. was covered in scabs in various stages of healing, was dirty, and had a chipped tooth, and Father and Mother were not interactive with V.A., removing her from her car seat only one time for four minutes prior to DCS appearing multiple hours later. DCS also alleged that Mother and Father were unable to provide V.A. with a home free of neglect or abuse and Mother and Father would benefit from the intervention of the court in order to receive support and services they would not otherwise receive.

[3] On October 26, 2017, the court held a hearing. That same day, the court entered an order finding that: V.A. was infected with scabies; she was covered with bruised wounds and scabs when she was last in her parents' care; parents contacted DCS following V.A.'s emergency removal; parents failed to appear at the scheduled visitation appointment; DCS executed a referral to the Bowen Center in Plymouth for supervised visitation; parents had not exercised

visitation; Father had a criminal history of public nudity and intimidation; and Father had not participated in any services offered by DCS. The court found V.A. to be a CHINS and ordered Father in part to maintain clean, safe, and appropriate sustainable housing; cooperate with all caseworkers, the guardian ad litem, and court appointed special advocate; maintain contact with DCS; submit to a diagnostic assessment at an approved licensed agency; enroll in an approved licensed agency home based services program, participate in all sessions, and successfully complete the program; enroll in parenting classes at an approved licensed agency, attend all sessions, and successfully complete the program; submit to random urinalysis testing and drug screens as required by caseworkers and refrain from the use of alcohol, illegal drugs, and other substance abuse; and attend and appropriately participate in all visits with V.A.

[4] Around the end of August 2018, Father and Mother divorced. On November 4, 2020, DCS filed a verified petition for the involuntary termination of the parent-child relationship between Father and Mother and V.A.

[5] In March 2021, the court held hearings. DCS presented the testimony of various witnesses regarding Father's threat in September 2019 to kill Terrance Wilkerson, a Fatherhood Engagement worker employed by SCAN Incorporated, DCS's attempts to contact Father, and Father's lack of progress. Father also testified.

[6] On June 22, 2021, the court found in part that Father threatened to kill Wilkerson; the Fatherhood Engagement Program was closed due to his threat;

Father had not visited with V.A. since August or September 2019 despite the fact that DCS made arrangements for him to participate in visitations; there were times when the case manager felt that the condition of Father's home could be harmful to V.A.; Father did not participate in or complete individual counseling; and Father did not regularly submit to drug screens and refused them on some occasions. It also found there was a reasonable probability that the reasons that brought about the child's placement outside the home would not be remedied and terminated Father and Mother's parental rights.

Discussion

[7] Father asserts that there was not clear and convincing evidence to support the trial court's conclusion that the reasons for the child's removal and placement outside the home would not be remedied. He argues that he participated in SCAN's program for four months prior to the termination and that his termination from the program was not due to an inability to benefit from services but because of threats made toward Wilkerson. He contends that he expressed willingness to participate in remedial programs, Wilkerson indicated that he could continue participation in SCAN with a different worker, and DCS did not seek further services for him after his termination from the SCAN program.

[8] In order to terminate a parent-child relationship, DCS is required to allege and prove, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id*. We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id*. "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful

not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence." *Id*. at 640. The involuntary termination statute is written in the disjunctive and requires proof of only one of the circumstances listed in Ind. Code § 31-35-2-4(b)(2)(B).

[10] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See E.M.*, 4 N.E.3d at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by

DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[11] To the extent Father does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[12] Family Case Manager Aaron Reidenbach ("FCM Reidenbach") testified that he received the case in August 2017 and was assigned the case initially until October 26, 2017, and during a second period from February 2019 until November 2019. He stated that Father had a "rough start," "it was confrontative at the beginning," and he "was not compliant overall." Transcript Volume II at 163. He testified that he made a referral for Father for individual counseling at the Bowen Center in September 2019 and Father failed to attend. He also stated that Father refused to perform a drug screen on March 29 and October 31, 2019.

[13] Wilkerson, the Fatherhood Engagement worker, testified that he worked with Father from May to September 2019 until Father threatened to kill him. He indicated that Father did not complete the Fatherhood Engagement Program and "there weren't enough visits for me to . . . lock down any improvements [Father] would need to make . . . ." *Id.* at 20. Wilkerson testified that, after

Father's threat to kill him, "there was never any opportunity . . . not that I heard if he would have gotten back into the program I think they would have given him to another co-worker of mine" and "just simply because of the threats made but there was – as far as I know there was never any attempts to kind of get him back into those services." *Id.* at 23. He also indicated that, had Father reached out to him following the threat, he would have directed Father's communication to his supervisor and encouraged Father to continue to benefit from professional services.

[14] Family Case Manager Dwila Lewis-Hess ("FCM Lewis-Hess") testified that she inherited V.A.'s case in November 2019 from FCM Reidenbach, sent Father "a couple of letters" to his address asking him to contact her, had "zero contact" with Father, and had difficulty locating him and obtaining a phone number for him. *Id.* at 187. She indicated that Father had an open referral for individual counseling but had not participated. She also made a referral for Father to home-based services through Fatherhood Engagement but Father did not complete that program. She stated that Father had not engaged in visits. When asked why DCS filed a petition to terminate Father's parental rights, she answered: "[Father] has . . . not engaged fully in all his court order[ed] services to remedy the reasons for involvement he also has not visited his daughter in almost three years with a stop of two visits in a three-year timeframe." *Id.* at 190.

[15] Guardian ad Litem Michael Harmeyer testified he became V.A.'s guardian ad litem in December 2020 and that terminating Father and Mother's parental

rights was in V.A.'s best interest. When asked why he believed Father's rights should be terminated, he answered:

> [W]hen you have a father who is not stable in his own life and for that matter has not shown . . . long term commitment . . . to his daughter whether it's through regular visits or otherwise . . . I don't believe he is . . . capable . . . and or appropriate to serve as a full-time caregiver for this very young girl that has some very real needs . . . more care attention love and having a parent who is there for her at all times he hasn't been there for her much at all in my explanation.

Id. at 203.

[16] When asked if he wanted services "after everything that had happened with Mr. Wilkerson," Father answered: "Um no because they already had denied me visits with my daughter they took the rights away at that time." *Id.* at 207. His counsel asked: "But the next day after that did you reconsider and want the services?" *Id.* Father answered: "No." *Id.* Father indicated that he was not aware that the location of his visitations were changed from South Bend to Plymouth and stated that "[n]obody told [him] that or nothing." *Id.* When asked if he believed the Fatherhood Engagement services would have helped him receive custody of V.A., he answered: "Yes sir if I would have continued." *Id.*

[17] While Father testified that neither of the two caseworkers stayed in contact with him after he threatened Wilkerson, FCM Lewis-Hess testified that she sent letters to Father in April 2020 and November 2020 indicating that she was his

case manager, had tried to contact him at the phone number she had, asked him to reach out to her to discuss services, and encouraged him to engage in services to reunify with his daughter. She also testified that her letters were not returned to DCS as undeliverable or unclaimed. She further testified that notices were sent out for court and that gave her some degree of assurance that Father had the opportunity to participate in the case.

[18] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in V.A.'s removal and the reasons for placement outside Father's care will not be remedied.

[19] For the foregoing reasons, we affirm the trial court.

[20] Affirmed.

May, J., and Pyle, J., concur.