

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
D.W. (Minor Child),

K.R. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 12, 2021

Court of Appeals Case No.
20A-JT-2167

Appeal from the Decatur Circuit
Court

The Honorable Timothy B. Day,
Judge

Trial Court Cause No.
16C01-2007-JT-130

Brown, Judge.

[1] K.R. (“Father”) appeals the involuntary termination of his parental rights to his child, D.W. We affirm.

Facts and Procedural History

[2] D.W. was born in September 2014. In December 2015, the Department of Child Services (“DCS”) filed a petition alleging D.W. was a child in need of services (“CHINS”), Father was incarcerated, and D.W.’s mother (“Mother”) tested positive for methamphetamine, and stating the child had been removed from the home. The court issued an order on February 2, 2016, finding Father was incarcerated and unable to care for the child and Mother tested positive for methamphetamines and admitted to using marijuana while being a caregiver for the child, determined the child to be a CHINS, and found it was in the child’s best interests to be removed from the home. The court also issued a dispositional order requiring in part that Father establish paternity. In May 2017, the permanency plan was changed to adoption.

[3] In October 2017, Mother’s parental rights to D.W. were terminated. In January 2018, the court ordered that Father be removed as a party to the case as he had failed to establish paternity. In July 2018, Father filed a motion to intervene stating he was the child’s biological father. In November 2019, the court entered an order granting modification stating that Father completed a paternity test and is the child’s biological father and that the dispositional decree was modified to require Father to participate in services. According to Guardian Ad Litem Rebecca Cavin (“GAL Cavin”), Father was incarcerated

sometime in November of 2019 and released at some point before February of 2020.

[4] On July 16, 2020, the DCS filed a petition to terminate the parent-child relationship of Father and D.W. On October 5, 2020, the court held a hearing at which it heard testimony from Family Case Manager Kristen Lazo (“FCM Lazo”), National Youth Advocate Program Family Service Coordinator Kensley Ashcroft, GAL Cavin, and Father. Father testified that he had attended weekly sobriety meetings for over a month where he received medication, and that he recently obtained health insurance. He testified he was living between his girlfriend’s residence and his deceased father’s house. He indicated that he and D.W. were seated next to each other at his father’s funeral in February. When asked if he had visited with her outside of the supervised visitation provider, Father answered “No,” and when asked “[s]o you have not seen her other than the visit that [Ashcroft] has supervised,” he answered “Yeah. I mean, way prior. Yeah.” Transcript Volume II at 72. He testified he has worked on and off for over a year at a salvage company and that family and his sobriety were his priorities.

[5] On October 23, 2020, the court entered an order terminating Father’s parental rights as to D.W. The court concluded there is a reasonable probability the conditions that resulted in the child’s removal from and continued placement outside the home would not be remedied. The court found that Father failed “to visit with the Child more than twice since November 7, 2019,” failed to provide “more than three (3) drug screens in the life of the underlying CHINS,”

had “positive drug screens for methamphetamine and amphetamine on January 22, 2018, and February 3, 2020,” had an “extensive criminal history inclusive of a felony conviction for possession of methamphetamine,” and had a “nearly utter lack of participation in court-ordered services in the CHINS.” Appellant’s Appendix Volume II at 47-48. The court found that termination of Father’s parental rights is in the child’s best interests. It also found “[t]he proposal made by DCS for the Child to be adopted by the paternal great grandparent and longtime placement [] is a satisfactory plan for the care and treatment of the Child, and is in the Child’s best interest.” *Id.* at 48.

Discussion

[6] 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).

[7] 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). In addressing the conditions resulting in a child's removal, 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. *Id.* at 642-643. A court may consider evidence of a parent's prior criminal history, drug and alcohol 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. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). 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.*

[8] Father states that "DCS has a specific plan for the Child to be adopted by the paternal great-grandmother with whom she had been placed throughout the CHINS case" and that he "must concede that the 'plan for care' element of the statute has been legally satisfied." Appellant's Brief at 11-12. He also states

that, “though [he] does not agree that the reasons for removal will not likely be remedied and does not agree that maintaining the relationship will be detrimental to the Child, on Appeal he is forced to concede there is direct evidence in the record supporting the trial court’s findings” and notes that DCS presented evidence that he “had not addressed his substance abuse issues until three (3) weeks prior to the Termination hearing.” *Id.* at 12.

[9] Father’s sole argument is that DCS did not prove that termination of his parental rights is in D.W.’s best interests. He argues that, while he did not meet all the requirements of the dispositional order, he showed marked improvement at the time of the termination hearing, had maintained employment, recognized he had a substance abuse problem, had been sober for three weeks at the time of the hearing, had recently obtained health insurance, had attended sobriety meetings, and had seen D.W. informally at the great-grandmother’s house on several occasions. He states K.B. was in her seventies and he had concerns about her ability to provide long term stable care for D.W. due to her age. He argues the practical effect of termination is only the removal of services, D.W. will continue to reside at the same placement, attend school in the same district, and interact with the same family and friends, and termination provides no extra stability, consistency, or assurance to D.W.

[10] In determining the best interests of a child, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child. *Id.* The testimony of a child’s

guardian ad litem regarding the child's need for permanency supports a finding that termination is in the child's best interests. *Id.*; see *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013) (the recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence termination is in the child's best interests), *trans. denied*.

[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] The trial court found D.W. was born in September 2014, Father was incarcerated when the child was removed on December 26, 2015, he failed to appear for a November 2016 permanency hearing and the court adopted a permanency plan of guardianship with paternal great-grandmother K.B., the child has continuously been placed with K.B. since February 9, 2016, Mother's parental rights were terminated in October 2017, and Father eventually established paternity in July 2018. The court found that, after several continuances, a hearing was set for November 7, 2019, on that date it ordered Father to participate in services, and that "[b]y the next review period, however, Father had already failed to participate in court-ordered services and failed to maintain contact with the Family Case Manager," "Father did not visit with the Child, and did not engage in fatherhood services," "[n]or did Father

complete a substance abuse assessment, or submit to random drug screens,” and he failed to appear for the March 5, 2020, CHINS review hearing.

Appellant’s Appendix Volume II at 43. The court found Father did not appear for the June 4, 2020 review hearing, visit with the child, maintain contact with the Family Case Manager, drug screen, participate in court-ordered services, or attend or participate in the majority of hearings.

[13] The court found that “Father has an extensive criminal history, including three (3) criminal charges accrued in 2020 that are currently pending, and which, while not dispositive, this Court finds significantly impede Father’s ability to stay out of jail and to effectively parent the Child.” *Id.* It found Father had pending charges for disorderly conduct, public intoxication, and operating a motor vehicle without ever receiving a license, and had convictions for trafficking with an inmate, possession of methamphetamine, operating a motor vehicle without ever receiving a license, criminal mischief, criminal trespass, public intoxication, disorderly conduct, resisting law enforcement, furnishing alcohol to a minor, possession of marijuana, possession of paraphernalia, and illegal consumption of an alcoholic beverage. The court admitted evidence of Father’s criminal convictions and pending criminal cases.

[14] In addition, the court found Father “has not evinced to this Court an ability to remain sober or remain engaged in court-ordered sobriety services,” during the four and one-half years the underlying CHINS case was open, he had submitted to only three drug screens, two of which were positive, and he tested positive for methamphetamine, amphetamine, and THC on January 22, 2018, and for

methamphetamine and amphetamine on February 3, 2020. *Id.* at 44. It noted the Family Case Manager testified Father was offered multiple opportunities to drug screen but was either no-show, no-call, or refused, that Father's most recent refusal to screen was in August 2020, the National Youth Advocate Program Family Service Coordinator and the DCS Family Case Manager testified Father had visited with the child only two times since being reinstated in the dispositional decree, he saw the child during a family funeral in the summer of 2020 and had a two-hour supervised visit on September 28, 2020.

[15] The court noted the GAL testified that Father's parental rights should be terminated because the child has been living with her current placement and paternal great-grandmother for nearly five years and is thriving and noted in her report that Father participated in only two visits with the child during the prior year and had not established sobriety or consistently participated in any services. The court found Father's testimony revealed he has ongoing sobriety issues, does not have his own housing, has a storied criminal history, had three criminal cases pending, has not consistently engaged in visits, has failed to provide drug screens, and has failed to comply with any of the court-ordered services offered for either of the two periods of time Father was a party to the dispositional decree. It found the DCS plan is for the child to be adopted by her paternal great-grandmother K.B., with whom she has been placed since February 2016, the DCS Family Case Manager testified the child is thriving and doing well in school and at home with her placement, and Father

acknowledged that he has access to the child for visits and has no complaints about placement.

[16] FCM Lazo testified regarding Father's noncompliance with the dispositional order, his criminal history and pending charges, his failure to complete drug screens, his positive drug tests which included methamphetamine on January 22, 2018, and February 3, 2020, his failure to complete a substance abuse assessment, his housing, his lack of participation in referred services for counseling, home-based casework, and fatherhood engagement, and that he attended one visit in 2019 and one on September 28, 2020, and was a no-show for the remainder of the visits.

[17] GAL Cavin testified that she recommended termination of Father's parental rights. She testified that D.W. had been removed from Father and Mother for nearly five years and Father participated in only two visits, had not consistently participated in any services or established sobriety, and had not shown he can care for D.W. She testified that she had not been able to schedule visits other than the initial meeting because Father had not responded to her attempts to reach out to him and that she estimated she had reached out to him ten to twelve times over the prior year and a half. The GAL's written report stated that D.W. was placed with her paternal great-grandmother K.B. in February 2016, D.W.'s teacher reports that D.W. is a bright student and does well with her peers, and D.W. is very bonded to K.B. as evidenced by her seeking physical affection and engaging with K.B. in her imaginative play.

[18] The trial court was able to consider the testimony and evidence regarding, and the relative timing of, Father's failure to participate in services and visitation, criminal activity, drug use, and sobriety. The court was also able to consider D.W.'s needs, stability, and placement with her great-grandmother. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the child's best interests is supported by clear and convincing evidence.

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

[20] Affirmed.

Bradford, C.J., and Vaidik, J., concur.