

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of Parental Rights of:

E.B. & A.S. (Minor Children),
and

J.B. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 23, 2023

Court of Appeals Case No.
22A-JT-3079

Appeal from the Delaware County
Circuit Court

The Honorable Kimberly S.
Dowling, Judge

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause Nos.
18C02-2206-JT-21
18C02-2206-JT-22

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitias concur.

Kenworthy, Judge.

Case Summary

- [1] J.B. (“Father”) appeals the termination of his parental rights to E.B. and A.S. (collectively, “Children”), claiming the trial court’s judgment lacks adequate evidentiary support. We affirm.

Facts and Procedural History

- [2] Father and M.S. (“Mother”)¹ were in a relationship with recurring incidents of domestic violence. Police officers were called on “multiple” occasions to intervene in their altercations. *Tr. Vol. 2* at 66. Father and Mother were both aggressors at different times, but Mother went to a domestic violence shelter three or four times.
- [3] E.B.² was born in June 2020, and A.S. was born in July 2021.³ In December 2020, the Indiana Department of Child Services (“DCS”) filed a petition alleging E.B. was a child in need of services (“CHINS”). Among other allegations, DCS alleged Father and Mother had committed domestic violence against each other in E.B.’s presence. DCS later removed E.B. from her parents’ care and placed her with a relative. On April 21, 2021, Father

¹ Mother’s parental rights were also terminated, but she is not participating in this appeal. We limit our discussion as much as possible to only those facts relevant to Father.

² E.B. was initially named “E.S.,” but her parents later changed her last name. *Tr. Ex. Vol. 1* at 178.

³ Father has two older children, but he does not have custody of them. *Tr. Ex. Vol. 1* at 24, 38.

stipulated E.B. was a CHINS, conceding: (1) he and Mother have a history of domestic violence; and (2) he and E.B. would benefit from court-ordered services. DCS filed a predispositional report recommending a permanency plan for E.B., specifically reunification with her parents.

[4] On May 12, 2021, the CHINS court issued a dispositional order as to E.B. The court ordered Father to meet the following relevant requirements: (1) contact the DCS case manager weekly; (2) allow the case manager to enter his home unannounced; (3) keep all appointments with service providers, such as therapists; (4) maintain suitable housing and a steady source of income; (5) refrain from acts of domestic violence or other criminal offenses; (6) complete a parenting assessment and comply with all recommended services, such as parenting classes, counseling, and domestic violence programs; and (7) attend all scheduled visitation with E.B.

[5] In June 2021, Father participated in a “bio-psycho-social” assessment and a parenting assessment with a home-based therapist. *Tr. Vol. 2* at 45. After reviewing the results, the therapist recommended Father:

participate in domestic violence education, that he also participate in mental health services such as, therapy to address issues from his childhood, just other things that had been going on with him at the time, and then . . . also . . . couples therapy . . . and anger management[.]

Id. at 48. The therapist further recommended Father not regain custody of E.B. until he completed assigned services.

- [6] A.S. was born while Father’s CHINS case involving E.B. was pending. Father and Mother argued at the hospital after A.S. was born, yelling at each other. DCS removed A.S. from Father and Mother’s custody while A.S. was still at the hospital, citing “continued domestic violence” and parents’ lack of preparedness to house A.S. *Id.* at 67. DCS placed A.S. with the same relative who was caring for E.B.
- [7] Next, DCS filed a separate CHINS petition as to A.S. Father stipulated A.S. was a CHINS, acknowledging he and Mother had a history of domestic violence, including when Mother was pregnant with A.S. He also stipulated both he and A.S. would benefit from court-ordered services, including parenting classes, therapy, and other mental health services. DCS filed a predispositional report suggesting a permanency plan for A.S., specifically reunification with his parents.
- [8] On November 18, 2021, the CHINS court issued a dispositional order as to A.S. The court ordered Father to comply with requirements similar to those set forth in the dispositional order in E.B.’s CHINS case.
- [9] During the pendency of the CHINS matters, Father was inconsistent in attending scheduled visitation with the Children. He “overslept” several times. *Id.* at 53–54. The visitation coordinator closed the DCS referral after Father failed to attend three scheduled visitations. A different visitation coordinator began working with Father in June 2022. His attendance remained sporadic. Father attended three out of four visits in June 2022, but only two out of eight

visits in July 2022, with no explanation to the coordinator. He did not attend any visits in August or September 2022, missing sixteen potential visits in those months.

[10] In addition, the DCS case manager made three referrals for Father to undergo psychological evaluations, but he never followed through. Father completed a domestic violence program, but only under a mandate from a probation office to avoid revocation of a suspended sentence. Thereafter, Father and Mother continued to commit acts of domestic violence. As a result, DCS directed Father to complete a domestic violence program again. Father attended “a few sessions” with a therapist in his home, *id.* at 84, but he was discharged after missing several sessions. Father did not contact the therapist again until after DCS had petitioned to terminate his parental rights. Even then, he attended only one session and was a no-show for several subsequent in-home appointments.

[11] The case manager also made referrals for Father to attend therapy, but his participation was inconsistent. Service providers repeatedly closed out the referrals due to Father’s noncompliance, and he never completed mental health treatment. Similarly, Father did not complete anger management treatment. In addition, Father refused to submit to drug screens.

[12] Despite the CHINS court’s order requiring Father to contact the case manager each week, his communication was inconsistent at best. As the case manager later explained: “there are periods of time where I don’t hear from him, and he

won't respond. His communication is more—when he wants something from me, he'll text and be nice, or he'll call and be nice. If he's upset, then he text [sic] long text messages of insults.” *Id.* at 75.

[13] Father's noncompliance with the CHINS court's requirements caused DCS to seek the court's permission to change its permanency plans for the Children from parental reunification to adoption. On May 16, 2022, the CHINS court granted its approval in both cases, concluding Father had “not complied with [each] child's case plan.” *Appellant's App. Vol. 2* at 26.

[14] By this time, Father and Mother had stopped living together but continued to have violent conflicts. Father lived in a home that appeared to the case manager to be appropriate during one visit, but on several other occasions Father did not allow the case manager to enter the home. In addition, Father lived with a new girlfriend, and the police were dispatched to his home several times to investigate new allegations of domestic violence between the couple, as well as between Father and Mother. Although Father also told his case manager he had found a steady job, he refused to provide pay stubs or identify his employer, stating he “was paid under the table[.]” *Tr. Vol. 2* at 86.

[15] On June 2, 2022, DCS filed Verified Petitions for Involuntary Termination of Parent-Child Relationship against Father and Mother as to E.B. and A.S. In July 2022, Mother gave birth to V.S. Father is V.S.'s father. Father, Mother, and Father's girlfriend had a “verbal altercation” while at the hospital, leading Mother to “chas[e]” them out of her room. *Tr. Ex. Vol. 1* at 82. As of the date

of the evidentiary hearing in the termination proceedings, V.S. was the subject of a separate CHINS case. DCS planned to place V.S. in relative care with E.B. and A.S.

[16] Meanwhile, the termination cases progressed to an evidentiary hearing. On the morning of the hearing, Father texted the case manager to inform her he would not appear in person. The case manager had previously told Father he needed to be present and had delivered a bus pass to his home the day before. Father “demanded” to receive a Zoom link to appear remotely for the hearing. *Tr. Vol. 2* at 76. The case manager declined, reminding Father he needed to appear in person and should contact his attorney. Father responded he would only appear at the hearing to “fire his attorney.” *Id.* at 85. Father was not present at the hearing, and the trial court proceeded in his absence.

[17] After the hearing, the trial court granted both of the Verified Petitions for Involuntary Termination of Parent-Child Relationship, issuing findings of fact and conclusions of law. The trial court determined, in relevant part:

Furthermore, based upon the above and foregoing, the Court also concluded [sic] that DCS has met its burden of proof, proving its petition to terminate Mother and Father’s parental rights by clear and convincing evidence, to wit:

1. [The Children] have been removed from their parents for at least six (6) months under a [dispositional] decree. The children have been removed from their parents for at least fifteen (15) of the last twenty-two (22) months, beginning with the date the children were removed from the home as a result of the children being alleged to be children in need of services or a delinquent child.

2. There is a reasonable probability that:
 - a. the conditions that resulted in the children’s removal or the continued placement outside the home will not be remedied by Mother and Father;
3. Termination of parental rights is in the Children’s best interests;
4. There is a satisfactory plan for the care and treatment of the Children, that being Adoption.

Appellant’s App. Vol. 2 at 171.

[18] Father now appeals.

Discussion and Decision

Standard of Review

[19] Father claims the trial court’s judgment terminating his parental rights lacks sufficient evidentiary support. “The traditional right of parents to establish a home and raise their children is protected by the United States Constitution, but may be terminated when parents are unable or unwilling to meet their parental responsibilities.” *In re N.G.*, 51 N.E.3d 1167, 1169 (Ind. 2016). To be sure, the involuntary termination of parental rights is an extreme measure intended to be used as a last resort when all other reasonable efforts have failed. *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011). But “parental interests are not absolute.” *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013). Therefore, parental interests “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). “The purpose of terminating parental rights is

not to punish parents, but to protect the children.” *Termination of Parent-Child Relationship of I.B. v. Ind. Dep’t of Child Servs.*, 933 N.E.2d 1264, 1270 (Ind. 2010) (quoting *Egly v. Blackford Cnty. Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)).

[20] DCS may petition to terminate a parent-child relationship if a child has been determined to be in need of services. Ind. Code § 31-35-2-4(a) (2019). The petition must allege, in relevant part:

(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.

* * * *

(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.

* * * *

(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.

I.C. § 31-35-2-4(b)(2) (2019).

[21] DCS must prove the allegations in the petition by “clear and convincing evidence.” I.C. § 31-34-12-2 (1998). If the court finds the allegations in DCS’s

petition “are true, the court shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a) (2012). In addition, the court shall issue findings of fact and conclusions of law. I.C. § 31-35-2-8(c).

[22] When reviewing a judgment terminating parental rights, we do not reweigh evidence or judge witness credibility. *See* Ind. Trial Rule 52(A) (specifying that in cases tried without a jury, “due regard shall be given to the opportunity of the trial court to judge credibility of witnesses”); *C.G.*, 954 N.E.2d at 923. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *C.G.* 954 N.E.2d at 923. We apply a two-tiered standard of review when reviewing findings of fact and conclusions of law in a termination case. *Id.* First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010). We will set aside the trial court’s judgment only if it is clearly erroneous. *Id.*

[23] Here, Father does not challenge any of the trial court’s findings of fact. Nor does he dispute the Children were removed from his custody for the required period set forth in Indiana Code section 31-35-2-4(b)(2)(A). And Father does not challenge the trial court’s determination DCS has a satisfactory plan for the care and treatment of the Children (adoption by a relative). He instead challenges two of the trial court’s other conclusions of law, arguing they lack evidentiary support.

Likelihood of Remedied Conditions

[24] Father argues the trial court erred in determining there is a reasonable probability he will not remedy the conditions identified by DCS when it removed the Children from his care and kept them in relative care. When considering whether a parent will remedy conditions related to a child's placement outside the home, the trial court must first determine what conditions caused DCS to place and retain the child outside of the parent's care. *I.A.*, 934 N.E.2d at 1134. Next, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* “[T]he trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 152 (Ind. 2005). The court should also judge a parent’s fitness as of the time of the termination hearing, accounting for evidence of changed conditions. *Id.* Even so, “[r]equiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[25] In particular, Father claims the trial court erred because: (1) he addressed his domestic violence issues; (2) he obtained suitable housing and a job; and (3) he completed a parenting assessment. DCS removed the Children from Father’s care mainly due to his acts of domestic violence. And Father continued to have arguments and violent conflicts with Mother after losing custody of the Children and after he and Mother stopped living together. Father also had

violent conflicts with his new live-in girlfriend. He completed a domestic violence education program, under orders from a probation department. But he continued to engage in violent conflicts with Mother, and DCS required Father to attend another program. He failed to complete the required program.

[26] The CHINS court ordered Father to obtain stable housing and a job. Although he obtained housing, he refused to allow the case manager to enter his home several times, in violation of the CHINS orders requiring him to give access to DCS employees. In addition, the only evidence of Father's job is his unsupported statement to the case manager. Father refused to identify his employer or produce a pay stub.

[27] Finally, Father completed a parenting assessment, but he failed to complete the programs DCS recommended after the assessment. Father did not successfully participate in mental health services or an anger management program. Even after DCS petitioned to terminate his parental rights, Father did not participate in a domestic violence program, despite having the opportunity to complete in-home counseling. And Father refused to submit to drug screening, which prevented DCS from determining whether drug use was a factor in his circumstances.

[28] Father's arguments are based on reweighing the evidence, which we may not do. *See C.G.*, 954 N.E.2d at 923 (stating we consider only the evidence and reasonable inferences favorable to the judgment). There is ample evidence to support the trial court's determination there is not a reasonable probability

Father will remedy the conditions resulting in the Children's removal and placement outside his home.⁴

Best Interests of the Children

[29] Father contends the trial court erred in determining termination of his parental rights is in the Children's best interests. On the question of a child's best interests, DCS need not show a child is "in immediate danger" of irreversible harm. *Egley*, 592 N.E.2d at 1234. Rather, a trial court may terminate parental rights "where the child's emotional and physical development are threatened." *Id.* When assessing a child's physical, emotional, and mental well-being, the trial court may consider "a myriad of factors," including a child's need for permanency. *K.T.K.*, 989 N.E.2d at 1235.

[30] Father argues: (1) there is no evidence the Children's "emotional, social, and physical well-being has improved as a result of removal from Father's care;" and (2) "DCS did not show remaining with Father was wholly inadequate for their survival." *Appellant's Br. at 22.* But the evidence shows Father threatened the Children's overall well-being and healthy development because he continued to engage in domestic violence. He completed a domestic violence

⁴ Father also claims DCS failed to show a reasonable probability of a threat to the Children's well-being resulting from continuation of the parent-child relationship. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, meaning "DCS was required to prove by clear and convincing evidence only one of the two requirements of subsection (B)." *I.A.*, 934 N.E.2d at 1133. We need not address Father's argument related to continuation of the parent-child relationship because the evidence supports the trial court's conclusion there is not a reasonable probability Father will remedy the conditions resulting in ongoing placement outside his care.

program only after a probation department required him to participate, and he failed to participate in another program after DCS determined he and Mother continued to have violent confrontations. Father also failed to complete an anger management program or other therapy. In addition, Father continued to engage in domestic violence with Mother even after they stopped living together, and he had violent confrontations with his new live-in girlfriend.

[31] Father points to his positive interactions with the Children during his infrequent visitations. But Father failed to address the key ongoing concern as to the Children’s emotional and mental well-being—domestic violence in the home. During the CHINS cases and termination proceedings, Father failed to take advantage of DCS’s services to help create an improved environment for the Children. Both the DCS case manager and the court-appointed special advocate (“CASA”) for the Children testified termination of Father’s parental rights was in the Children’s best interests. Sufficient evidence supports the trial court’s decision that terminating the parent-child relationship is in the Children’s best interests. *See, e.g., In re I.L.*, 177 N.E.3d 864, 875 (Ind. Ct. App. 2021) (identifying sufficient evidence supporting a best-interests determination where there was ongoing domestic violence and the parent failed to complete services aimed to remedy domestic violence), *aff’d*, 181 N.E.3d 974 (2022); *In re C.S.*, 190 N.E.3d 434, 440 (Ind. Ct. App. 2022) (identifying sufficient evidence supporting a best-interests determination where parent had failed to correct the conditions leading to the child’s continued placement outside the home and the

CASA testified termination of the parent's rights was in the child's best interests), *trans. denied*.

Conclusion

[32] We conclude the evidence clearly and convincingly supports the trial court's findings, and these findings clearly and convincingly support the judgments terminating Father's parental rights to E.B. and A.S.

[33] Affirmed.

Bailey, J., and Tavitas, J., concur.