

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent Child Relationship
J.P. (Minor Child),

A.A. (Father),
Appellant-Respondent,

v.

May 7, 2021
Court of Appeals Case No.
20A-JT-501

Appeal from the Marion Superior
Court Juvenile Division

The Honorable Mark A. Jones,
Judge

The Honorable Peter Haughan,
Magistrate

Indiana Department of Child
Services,

Appellee-Petitioner,

and

Child Advocates Inc.,

Appellee-Guardian Ad Litem.

Trial Court Cause No.
49D15-1902-JT-217

Brown, Judge.

- [1] A.A. (“Father”) appeals the involuntary termination of his parental rights to his child J.P. We affirm.

Facts and Procedural History

- [2] On November 15, 2011, J.P. was born to K.P. (“Mother”) and Father. On April 6, 2017, DCS filed a petition alleging that J.P. and Mother’s three other children were in need of services (“CHINS”).¹ The petition alleged that Mother failed to provide the children with a safe and appropriate living environment free from substance abuse, Mother made threats of taking her own life, Father had not demonstrated the willingness or ability to appropriately parent J.P., and Father’s whereabouts were unknown.² That same day, the court held a hearing

¹ Father is not the biological father of the other children. Mother signed adoption consents to her children.

² The petition also alleged that Father resided at a residence on Guy Street in Indianapolis.

at which Father did not appear, placed J.P. in foster care, and ordered DCS to serve or publish as to Father.

- [3] On August 2, 2017, the court held a hearing at which Father failed to appear. Mother admitted that the children were CHINS because she needed assistance obtaining appropriate housing. The court adjudicated the children to be CHINS. On August 23, 2017, the court entered a dispositional order.
- [4] On September 4, 2017, the court found that service was provided to Father by publication which expired on May 30, 2017, that Father failed to appear, and that he was in default. The court also ordered “no services offered or ordered until” Father appeared in court or in the DCS office to demonstrate a desire and ability to care for J.P. Exhibits Volume at 59.
- [5] In orders dated November 29, 2017, March 7, 2018, June 6, 2018, October 3, 2018, January 23, 2019, and May 1, 2019, the court indicated that Father failed to appear at hearings.
- [6] On February 14, 2019, DCS filed a verified petition for the involuntary termination of the parent-child relationship between J.P. and Father and Mother. On December 19, 2019, the court held a hearing, and Father appeared with counsel. When asked if she ever had any communication with Father about J.P., Mother answered: “I don’t have any contact with him at all.” Transcript Volume II at 99. She stated that Father knew J.P. was his daughter because a DNA test was completed. She stated that Father abused J.P.; specifically, when J.P. was three or four years old, she “cut [Father] off with

contact after he brought [J.P.] home to [her] and [she] had to call the police and make a police report on him about what he did to her.” *Id.* at 101. She stated that Father “wasn’t a good father” and she observed him using marijuana and cocaine while the children were in her care. *Id.* at 102.

[7] Father testified that he did not call DCS to find out about J.P. When asked if he ever attended any court hearings, he answered that he attended a “couple in Juvenile over there” but he could not remember when. *Id.* at 108. He testified that the last time he saw J.P. was when he walked into a McDonald’s on the way to work in 2018 and that he had not seen her previously for about one or two years.

[8] On January 9, 2020, the court continued the hearing. Family Case Manager Edrikie Golden (“FCM Golden”) testified that she first spoke with Father before the petition to terminate his parental rights was filed and he advised her to contact his mother and that he was dealing with a case and was not going to be able to appear in court. When asked why she had not referred any services for Father, she stated that Father had never appeared in court or contacted DCS to show that he wanted to visit J.P. She testified that Father had not remedied the conditions that resulted in J.P.’s continued removal. She also testified the case had been open for two and a half years and Father had not shown that he was able or willing to parent J.P. She stated that maternal grandmother ran into Father, obtained a phone number from him, and passed it on to her. She testified that she contacted Father and he “wasn’t surprised” about the case. *Id.* at 131.

- [9] On cross-examination by Father’s counsel, FCM Golden testified that she located an address for Father and attempted to serve him multiple times. She also testified that “we looked on mycase – well, we have to complete an ADI³ which is we run through the jail – Marion County Jail, the white pages, mycase and see if we come up with anything for the parent, but we had that – the address that we tried to serve [Father] at is the address that I did find for him.” *Id.* at 136-137. On redirect examination, FCM Golden testified that DCS ran “an ADI,” searched “all the white pages, mycase, the county jails, the corrections office,” and “ran all the searches to locate.”⁴ *Id.* at 140.
- [10] On recross-examination by counsel for Child Advocates, Inc., FCM Golden testified that she had no contact phone number for Father “at all up until” the petition to terminate his parental rights and that she contacted him a week or two “before the TPR” or about a year earlier. *Id.* at 141. She testified that Father had not kept in contact with her since that time, did not appear at any CHINS hearings, and did not ask for visitation.
- [11] Guardian ad litem Marquia Washum (“GAL Washum”) testified that she had been involved with the case since August 2017 and that Father had not appeared at any CHINS hearings at which she was present.

³ It appears that an ADI is an affidavit of diligent inquiry.

⁴ FCM Golden testified: “I believe in the ADI the putative father registry is all included in the ADI.” Transcript Volume II at 140.

[12] Father testified that he planned to purchase a home upon release from jail and to live there with his fiancée, her daughter, and his youngest daughter. He stated that the home would have adequate space for J.P., he had been consistently employed prior to his incarceration, and he would ensure all of J.P.'s needs were met. On cross-examination, Father acknowledged the possibility that he could be found guilty of battery and that he had another pending case in Marion County involving possession of cocaine that needed to be resolved before he could be released from custody. He also testified that he had a warrant out of Boone County for possession of marijuana.

[13] On January 30, 2020, the court terminated Father's parental rights. The court took judicial notice of the records of the CHINS proceedings. It found that Father's testimony was not credible. It found DCS had shown by clear and convincing evidence that there was a reasonable probability that the conditions resulting in J.P.'s removal would not be remedied, the continuation of the parent-child relationship between Father and J.P. posed a threat to J.P.'s well-being, and termination of the relationship was in J.P.'s best interests.

Discussion

[14] Father argues DCS violated his due process rights and its own Policy Manual in not making efforts to contact him after the CHINS case was filed until it filed its petition to terminate his parental rights. He asserts, without citation to the record, that DCS failed to provide him a case plan. He also asserts the juvenile court's findings that he had not remedied the condition that led to J.P.'s

removal or that the continuation of the parent-child relationship posed a threat to J.P. were clearly erroneous.

[15] DCS argues that Father forfeited his claim regarding services because he failed to raise it during the CHINS proceedings. DCS asserts that, waiver notwithstanding, Father cannot challenge a termination order on the basis that DCS allegedly failed to provide reasonable efforts to reunify. It also contends DCS made reasonable efforts to locate Father and its inability to provide services to Father was due to his own failure to become involved in the case. It further contends that Father had not demonstrated an ability to care for J.P. due to his absence and criminal activity.

[16] With respect to Father's due process arguments, it has been established that, as a matter of statutory elements, DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship. *In re T.W.*, 135 N.E.3d 607, 612 (Ind. Ct. App. 2019), *trans. denied*. However, parents facing termination proceedings are afforded due process protections. *Id.* We have discretion to address such due process claims even where the issue is not raised below. *Id.* CHINS and termination of parental rights proceedings "are deeply and obviously intertwined to the extent that an error in the former may flow into and infect the latter," and procedural irregularities in a CHINS proceeding may deprive a parent of due process with respect to the termination of his or her parental rights. *Id.* (citing *Matter of D.H.*, 119 N.E.3d 578, 588 (Ind. Ct. App. 2019), *aff'd in relevant part on reh'g, trans. denied*). See also *In re J.K.*, 30 N.E.3d 695, 699 (Ind. 2015) (holding "when the State seeks to

terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process”) (quoting *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (alteration and internal quotation marks omitted)).

[17] “Due process requires ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893 (1976)). The Indiana Supreme Court has held that “the process due in a termination of parental rights action turns on balancing three *Mathews* factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *Id.* (citing *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011)). “In balancing the three-prong *Mathews* test, we first note that the private interest affected by the proceeding is substantial – a parent’s interest in the care, custody, and control of her child.” *In re C.G.*, 954 N.E.2d at 917. “We also note the countervailing *Mathews* factor, that the State’s *parens patriae* interest in protecting the welfare of a child is also substantial.” *Id.* Thus, we turn to the risk of error created by DCS’s actions and the trial court’s actions. *See id.*

[18] Father points to the following portion of DCS’s policy manual:

The FCM will also:

1. Document all efforts and the results of the search in the case management system;
2. Advise the Child and Family Team (CFT) regarding the identity, or lack thereof, of the absent parent and efforts to locate;

3. Complete/provide an Affidavit of Diligent Inquiry (SF 54778) during the assessment phase outlining the efforts taken to identify and/or locate the absent parent to the DCS Staff Attorney to ensure that notice of proceedings is published as to the absent parent; and

4. Continue to pursue these efforts if necessary throughout the life of the case.

Note: When the identity and location of the absent or alleged parent is known, the FCM will provide the address of the parent to the DCS Staff Attorney so the parent may receive notices of court proceedings and may be considered for placement and services.

Exhibits Volume at 130.

[19] DCS’s policy manual also provides directions regarding the provision of services and states DCS “will provide family services to all children and families with an open case,” “will make appropriate service referrals,” and “will reassess the strengths and needs of the child and family throughout the life of the case and will adjust services, if necessary, to meet identified needs.” *Matter of D.H.*, 119 N.E.3d at 589 (citing Indiana Department of Child Services Child Welfare Policy Manual, Ch. 5, Sec. 10).⁵

[20] The court found:

⁵ The Indiana Department of Child Services Child Welfare Policy Manual is now found at <https://www.in.gov/dcs/2536.htm> [<https://perma.cc/J4F8-PFPV>] (last visited April 22, 2021).

30. Father did not remember when he learned of the Child's CHINS case, but that it was about two to three (2-3) years ago. After he learned of it, he contacted . . . the maternal grandmother. He did not attempt to contact DCS.

31. Father claimed that he attended a couple of the Child's CHINS case hearings in juvenile court, but that the case was continued and that he argued with Mother.

32. Father testified that the last time he saw the Child was in March 2019 at the McDonald's during her supervised visit with [the maternal grandmother] and her siblings. He further testified that prior to March 2019, he had last seen the Child a year or two before that occasion.

* * * * *

35. Edrikie K. Golden is the FCM that DCS has assigned to the Child, and she has been assigned to the Child since April 2017.

36. FCM Golden did refer [sic] any services or parenting time with the Child for Father because Father did not appear in court in the CHINS cases.

37. The first conversation that FCM Golden had with Father occurred when she was trying to contact him regarding service of process in this matter. Father spoke with her about serving his mother as he had another case to deal with. After this conversation, Father did not make any effort to contact DCS regarding the Child to request parenting time or a referral for services.

Appellant's Appendix Volume II at 21. 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*.

[21] The record reveals that the court's September 4, 2017 order found that Father was served by publication that expired on May 30, 2017. Father does not challenge this service.⁶ Further, FCM Golden testified that she located an address for Father and attempted to serve him multiple times. She testified that DCS ran "an ADI," "all the white pages, mycase, the county jails, the corrections office search and all that. We ran all the searches to locate." Transcript Volume II at 140. She also testified that "the address that we tried to serve [Father] at is the address that I did find for him." *Id.* at 136-137. Father testified that he became aware of the CHINS case two or three years earlier. Under these circumstances, we cannot say that Father's due process rights were violated. *See In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000) ("[A] parent may not sit idly by without asserting a need or desire for services and

⁶ Father argues the court improperly entered separate dispositions as to each parent and cites *In re N.E.*, 919 N.E.2d 102 (Ind. 2010), and *In re K.D.*, 962 N.E.2d 1249 (Ind. 2012). In *In re K.D.*, the Indiana Supreme Court held that, "[w]hile a CHINS determination establishes the status of a child and a separate analysis as to each parent is not automatically required, as *In re N.E.*, 919 N.E.2d 102 (Ind. 2010), established, there are fact-sensitive situations where due process guarantees require separate fact findings for each parent." 962 N.E.2d at 1259-1260. The Court also held that "[w]henver a trial court is confronted with one parent wishing to make an admission that the child is in need of services and the other parent wishing to deny the same, the trial court shall conduct a fact-finding hearing as to the entire matter." *Id.* at 1260. However, the Court also acknowledged that, "in many situations where DCS is involved, it is common for the children to have absent or even unknown parents. In those situations, it is critical that DCS properly serve all parties, by publication if necessary, and if the absent parent is not present, a default judgment could be entered." *Id.* at 1257. Father does not assert that he denied the claim that J.P. was a CHINS.

then successfully argue that he was denied services to assist him with his parenting”).

[22] 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).

[23] 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).

[24] 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.*

[25] The trial court's order states in part:

33. Father is engaged to Tameka Grimes. He is unaware of whether she has a criminal history or DCS history. He does not know her date of birth. After he is released from incarceration, Father and Ms. Grimes plan to purchase a four (4) bedroom house where they, her daughter, and the Child will live. Father claims that he is able to provide for this house and the Child as he is employed as a subcontractor who rehabs homes. Father does not know the address of the house.

34. Father's testimony was not credible.

* * * * *

f. The conditions that led to the Children's removal or placement and retention outside the home of Father are: Father's failure to demonstrate the willingness or ability to appropriately parent the Child; his history of criminal behavior and involvement in the criminal justice system; and his current incarceration.

g. Father has not remedied these conditions and it is highly probable that he will not remedy these conditions even if given

more time. The CHINS case has been pending for over two and one-half (2 ½) years. Father learned about the Child's CHINS case at or about the time the case began. Father made no effort to contact DCS regarding the Child. He did not attempt to provide for the Child. He did not inquire about [] receiving any services that would help him demonstrate that he wanted the Child or that he could safely parent the Child. The only time that Father has seen the Child since the case was filed was a chance meeting in March 2019 at a McDonald's restaurant. Additionally, Father [has] pending serious felony charges involving allegations of battery, neglect of a child, and drug possession, and he remains incarcerated on a high bond.

Appellant's Appendix Volume II at 23.⁷

[26] In light of the unchallenged findings, the length of Father's absence, and 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 J.P.'s removal and the reasons for placement outside Father's care will not be remedied.

[27] While Father does not specifically challenge the trial court's finding that termination of the parent-child relationship is in the best interests of J.P., we

⁷ The court found that Father had a history of criminal behavior and involvement with the criminal justice system. Specifically, it found Father pled guilty to carrying a handgun without a license as a class A misdemeanor in 2011 and in 2014, and violated the terms of his probation in 2015. The court found that the State charged Father in 2018 with battery with serious bodily injury to a person under fourteen years of age and neglect of a dependent resulting in serious bodily injury as level 3 felonies, the court issued a warrant for Father's arrest, Father was taken into custody on May 7, 2019, and the case was pending. The court also found the State charged Father with possession of cocaine as a level 6 felony in 2019 and he was incarcerated awaiting trial.

note that in determining the best interests of a child, the trial court is required to look beyond the factors identified by DCS and 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 court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, the recommendations by both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in a child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied.*

[28] GAL Washum recommended that the best plan for J.P. was adoption. When asked if she believed it was in J.P.'s best interest to see if Father can parent her, GAL Washum answered in the negative because she had never seen Father until the termination hearing. She testified that it was a concern that Father had not engaged or contacted DCS "[e]specially since his mother was coming to hearings" Transcript Volume II at 152.

[29] FCM Golden testified that termination of Father's parental rights is in J.P.'s best interests because he had not shown an ability to care for her or provide a stable home. When asked if Father should be given more time, she answered: "No. This case has been opened two and a half years and [he has] not show[n] [he] was able or willing." *Id.* at 130.

[30] Based on the testimony, as well as the totality of the evidence as set forth in the record and termination order, we conclude that clear and convincing evidence supports the trial court's determination that termination is in J.P.'s best interests.

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

[32] Affirmed.

Robb, J., and Crone, J., concur.