

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of K.E. (Minor Child)

and

D.T. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

December 8, 2022

Court of Appeals Case No.
22A-JT-1545

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2110-JT-151

Bradford, Chief Judge.

Case Summary

[1] D.T. (“Father”) is the biological father of K.E. (“Child”). C.E. (“Mother”) is Child’s mother.¹ The Department of Child Services (“DCS”) became involved with Child on December 2, 2019. The next day, DCS filed a petition alleging that Child was a child in need of services (“CHINS”). After Child was found to be a CHINS, the juvenile court ordered Father to participate in certain services. Father initially refused to participate in services, but eventually agreed to participate. DCS eventually petitioned to terminate Father’s parental rights to Child after Father failed to successfully complete the court-ordered services. Following an evidentiary hearing, the juvenile court granted DCS’s termination petition. On appeal, Father contends that DCS failed to present sufficient evidence to support the termination of his parental rights. We affirm.

Facts and Procedural History

[2] Child was born to Mother on June 19, 2019. On December 2, 2019, DCS received a report stating that Child and his then-sixteen-year-old Mother had been residing with Mother’s cousin when a physical altercation broke out between Mother and Mother’s cousin after Mother’s cousin learned that

¹ Mother does not participate in this appeal.

Mother was again pregnant. Mother was holding Child at the time of altercation. The report also indicated that Father, who was twenty-nine years old at the time, resided in Illinois and “there was an investigation through [the] Illinois Department of Children and Family Services due to [Mother] being a minor at the time of conception.” Ex. Vol I p. 7. Mother and Child were initially “removed and placed together” at a residential facility that provided care to teenage mothers and their children. Ex. Vol. I p. 7.

[3] On December 3, 2019, following an emergency removal of both Mother and Child, DCS filed a petition alleging that Child was a CHINS. In the petition, DCS alleged that

[t]he child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision: (A) when the parent, guardian, or custodian is financially able to do so; or (B) due to the failure, refusal, or inability of the parent, guardian, or custodian to seek financial or other reasonable means to do so; and the child needs care, treatment, or rehabilitation that the child is not receiving; and is unlikely to be provided or accepted without the coercive intervention of the Court.

Ex. Vol. I p. 12. On February 19, 2020, Mother admitted that Child was a CHINS. The CHINS determination was subsequently entered as it related to Father after Father failed to appear despite being served with notice via publication.

[4] Despite Father’s initial indication that he “[would] not be involved in the case for fear that he [would] be arrested due to Mother’s age at the time of conception,” on May 6, 2020, Father was ordered “to participate in Fatherhood Engagement Services to assist with establishing paternity and determining the need for additional services such as home[-]based case management, therapy, etc.” Ex. Vol. I pp. 54, 57. DCS continued to contact and notify Father of court hearings despite his refusal to participate in the case plan.

[5] After Child’s permanency plan was changed to adoption, Father informed DCS family case manager (“FCM”) Stephanie Walker “of his desire to participate in the previous ordered case plan services and establish paternity for” Child. Ex. Vol. I p. 145. Given Father’s decision to start cooperating with DCS, on January 20, 2022, DCS petitioned the juvenile court to “reaffirm Real Fatherhood Initiative [(“RFI”)] Services to provide homebased case work services, parenting education, and assistance with establishing paternity” and requested that the following services be ordered for Father:

- a. Clinical assessment to help identify any underlining medical and mental health needs;
- b. One time drug screen; and
- c. Supervised visitations at a third-party facility as [Father] has not had any contact with [Child] since the opening of the Child in Need of Services cause in 2019.

Ex. Vol. I p. 146. DCS further requested that “if the drug screen yield[ed] positive for any illegal substance, the Court order [Father] to participate in a substance abuse assessment and ongoing drug screens.” Ex. Vol. I p. 146. The

juvenile court granted DCS's motion and ordered Father to participate in services. Father, however, failed to successfully complete the ordered services.

- [6] In mid-October of 2021, DCS filed a petition seeking to terminate Father's parental rights to Child. The juvenile court held an evidentiary hearing on DCS's petition on May 25, 2022. During the evidentiary hearing, DCS presented evidence outlining Father's failure to make significant progress towards providing Child with a safe and stable living environment. Following the conclusion of the evidence, the juvenile court took the matter under advisement. On June 7, 2022, the juvenile court entered an order terminating Father's parental rights to Child.

Discussion and Decision

- [7] "The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children." *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly

harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[8] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[9] In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* "A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[10] In challenging the juvenile court's order, Father contends that the evidence is insufficient to sustain the termination of his parental rights to Child. In order to support the termination of Father's parental rights to Child, DCS was required to prove the following:

- (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....
 - (iii) The child has been removed from the parent ... for at least fifteen (15) months of the most recent twenty-two (22) months ... as a result of the child being alleged to be a child in need of services....
- (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). Father argues that the evidence is insufficient to prove subsections (B) and (C).

I. Conditions Unlikely to be Remedied/Threat to Child's Wellbeing

[11] It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record

supporting the juvenile court's determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). See *In re S.P.H.*, 806 N.E.2d at 882.

- [12] When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In so doing, the trial court may consider the parent's response to the services offered through the department of child services. 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. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only that there is a reasonable probability that the parent's behavior will not change.

In re B.J., 879 N.E.2d 7, 18–19 (Ind. Ct. App. 2008) (internal citations and quotations omitted).

- [13] With respect to Father, the juvenile court made numerous findings about the conditions resulting in Child's removal, the likelihood that said conditions would be remedied, and whether the continuation of the parent-child relationship posed a threat to Child.

There is a reasonable probability that the conditions resulting in the removal of the child from parents' home will not be remedied in that: In December of 2019[,] a report was received due to a physical altercation between mother and a cousin. Mother did

not have adequate supplies for the child. The investigation revealed that mother was a minor and did not have adequate support for caring for the child. Alleged father was under a criminal investigation due to the age of mother. Relative placement was explored but no viable relative was located. Both mother and child were removed and placed in DCS' care.

Services were offered to the parents pursuant to a case plan which included an initial clinical assessment, home based casework services, and for mother to enroll in an educational program. The child was to have a full medical evaluation.

Both mother and [Father] were represented by counsel for the termination proceedings. Neither mother nor [Father] appeared for the fact[-]finding hearing.

[Father] does not have any participation in the case plan for reunification. [Father] does not visit the child and does not have any significant bond with the child. Services were offered through Real Father Initiative to establish paternity. Father submitted to a DNA test with verified paternity, but Father refused to establish paternity due to his age and the age of mother when the child was conceived. Father failed to participate in any aspect of the case plan or this child's life. Father does not participate in the CHINS review hearings for this child. Father was ordered to submit to drug screens, parenting assessment and father did not complete those services. Father was to have visitations with the child once he was compliant for 30 days with the case plan. Father never complied. All efforts to engage father have failed. Father has shown no interest in parenting this child.

Father is currently incarcerated....

The permanency plan changed to adoption on September 22,

2021.

Neither parent is providing any emotional or financial support for the child. Parents have not completed any case plan for reunification. Neither parent is in a position to properly parent this child.

The child remains outside of the parents' care. The original allegations of neglect have not been remedied by the parents. The Court finds that the child was removed on December 2, 2019 and the conditions have not been remedied by either parent. Parents have not demonstrated an ability to independently parent the child and provide the necessary care, support and supervision. There is no basis for assuming the parents will complete the necessary services and find one or both of themselves in a position to receive the child into the home. Parents failed to utilize the available services and make the necessary efforts to remedy the conditions, which led to intervention by DCS and the Court.

Appellant's App. Vol. II pp. 2–4.

[14] In arguing that the evidence is insufficient to support the juvenile court's conclusion that the conditions leading to Child's removal were not likely to be remedied, Father argues

[T]he Court found that FATHER did not have any participation in the case plan for reunification. However, the Court failed to recognize that the child was removed from MOTHER and the CHINS Court never made a finding that the child should be reunited with the FATHER.

Moreover, the Court found that FATHER submitted to a DNA test, but never established paternity. Our argument again is that FATHER was never actually part of the case plan, reunification

was the case plan for MOTHER and not FATHER. In fact, DNA testing was not done until March 2022, when the case plan had been changed to termination of parental rights. Also, the Court failed to give any credit to the fact that FATHER had completed his RIF intake assessment.

Further, the court indicated that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the children in that: for the reason previously stated. Again, there was no evidence presented that FATHER ever harmed [Child], while in his care and custody.

Appellant's Br. p. 11. To the extent that Father argues that he was "never actually part of the case plan," we conclude that the evidence proves otherwise. *See* Appellant's Br. p. 11.

[15] The record demonstrates that while Father was not initially ordered to participate in services at the time of the CHINS determination, both before and after Child's permanency plan changed to adoption, Father was included in the case plan and was provided an opportunity to engage in services and show that he could act as a parent to Child. When first contacted by DCS, Father indicated that he would "not be involved in the case for fear that he [would] be arrested due to" the fact that Mother conceived Child while underage and while father was an adult. Ex. Vol. I p. 54. Further, once Father indicated that he did want to participate in the case, DCS took steps to involve Father in the reunification services that the juvenile court had previously ordered for him. These services included Fatherhood Engagement services, a clinical assessment, a parenting assessment, "a one-time drug screen and if the drug screen came

back positive then random drug screens,” a DNA test, establish paternity, and visitation upon thirty days of Father being compliant with services. Tr. Vol. II p. 51. Father completed an intake with an RFI worker and was assigned a Fatherhood Engagement worker but failed to follow through with his assigned caseworker. Father indicated that he did not want to participate in services until it was clear that he was Child’s biological father. Father did not complete the parenting assessment or his initial drug screen. Although a DNA test indicated paternity of Child in March of 2022, Father did not go through legal proceedings to establish paternity. Furthermore, prior to his incarceration in Illinois in May of 2022, Father had represented to DCS that he was homeless, but indicated that he could stay with his mother and receive his mail at her address. Father’s other children resided with their respective mothers, and Father never reached out to DCS to inquire about Child or Child’s wellbeing.

[16] Father only challenges the juvenile court’s determination that he was part of Child’s case plan and does not specifically challenge any of the juvenile court’s other findings on appeal, so they “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020). As the evidence described above demonstrates, Father was included in the case plan but failed to participate. This fact, coupled with the juvenile court’s other unchallenged findings, supports the juvenile court’s conclusion that the conditions that resulted in Child’s removal are not likely to be remedied. Father’s claim to the contrary amounts to nothing more

than an invitation for this court to reweigh the evidence, which we will not do. See *In re S.P.H.*, 806 N.E.2d at 879.

II. Child's Best Interests

[17] We are mindful that in considering whether termination of parental rights is in the best interests of the child, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* “A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do the same supports a finding that termination of parental rights is in the best interests of the children.” *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007), *trans. denied*.

The [juvenile] court need not wait until the child is irreversibly harmed such that [his or her] physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child’s best interests.

In re A.K., 924 N.E.2d 212, 224 (Ind. Ct. App. 2010).

[18] The juvenile court concluded that termination of Father’s parental rights was in Child’s best interests. In challenging this conclusion, Father argues

The DCS must prove that it is in the best interest of the child that his or her parental rights are terminated. I.C. 31-25-2-4(b)(2)(C). In totality, the evidence presented at trial, showed that DCS failed to possibly come close to satisfying the standard of clear and convincing. Further, the trial court failed to address the pain and suffering that the child will indeed experience when he realizes that he will not have on-going contact with his FATHER. Although, the child was very young at removal, he will likely want to know his biological FATHER. Again, this child's best interest was most definitely not served by this ruling. The needs of the children must be examined from many prospective[s]. DCS's objective should not be to cause measurable pain and suffering on a young child. FATHER has other children. This child should be afforded the opportunity to be raised or at least have a relationship with his biological siblings. We contend that FATHER is able to comply with his case plan. Unfortunately, FATHER'S compliance is taking much too long for DCS.

Appellant's Br. p. 12.

[19] Despite Father's claim to the contrary, the record sufficiently establishes that termination of Father's parental rights was in Child's best interests. FCM Walker testified that Father had not shown any indication that he wanted to take care of Child and opined that termination of Father's parental rights was in Child's best interests. FCM Walker explained that foster parents had been Child's family for the majority of his life, explaining that

[t]hey provide him with a stable home, a loving home, want nothing but the best for him. At this time, it just seems that neither [Mother] nor [Father] has [Child's] best interest in the forefront of their minds at this time. So, I just feel like [Child]

deserves permanency as was stated before, and the [foster parents] would be able to provide that for him.

Tr. Vol. II p. 59. In addition, FCM Mona Garcia opined that termination of Father's parental rights was in Child's best interests, testifying that

[Child] has been in care, you know, basically since he was six months old. The parents have not participated in the case plan. They have not provided him any kind of emotional support. He's placed in a loving and caring home and the child deserves permanency at this point.

Tr. Vol. II p. 45.

[20] Given FCM Walker's and FCM Garcia's testimony and recommendations coupled with the evidence demonstrating that Father has not successfully completed any services and Child's need for permanency, we conclude that the juvenile court's determination that termination of Father's parental rights is in Child's best interests is supported by sufficient evidence. *See Lang*, 861 N.E.2d at 373 (providing that the testimony of the case worker, GAL, or a CASA regarding the children's best interests supports a finding that termination is in the children's best interests). Father's claim to the contrary again amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

[21] The judgment of the juvenile court is affirmed.

Riley, J., and Pyle, J., concur.