

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Involuntary Termination of the Parent-Child Relationship
of: K.M.W., K.R.T., and K.L.T. (Minor Children)

P.W. (Father),

Appellant

v.

Indiana Department of Child Services,

Appellee



March 1, 2024

Court of Appeals Case No.

23A-JT-2016

Appeal from the Steuben Circuit Court

The Honorable Allen N. Wheat, Judge

Trial Court Cause Nos.

76C01-2210-JT-143

76C01-2210-JT-144

76C01-2210-JT-145

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] P.W. (“Father”) appeals the involuntary termination of his parental rights with respect to his children, K.M.W., K.R.T., and K.L.T. (“Children”), claiming due process violations and challenging certain findings. We affirm.

Facts and Procedural History

- [2] Father and E.T. (“Mother”) are the parents of K.M.W., who was born in November 2015, and K.R.T. and K.L.T., who are twin brothers born in April 2019. On February 6, 2020, the court issued an order granting Father sole custody of Children until Mother completed a substance abuse program and maintained sobriety for at least six months. The order also provided that, upon completion of no less than ninety days of her program, Father may permit Mother to have unsupervised parenting time.
- [3] On July 19, 2021, the Department of Child Services (“DCS”) filed a petition alleging that Children were children in need of services (“CHINS”), and Children were removed from Father’s care. On July 29, 2021, the court issued an order stating that it had held a hearing, observing Mother and Father made admissions, and finding Children to be CHINS. In particular, Mother admitted that she was not to have unsupervised parenting time until she completed at least ninety days of a rehab program, she was found in a motel with Children

and an infant who was found deceased, she used methamphetamine prior to being the sole caregiver for the four children, she slept in the bed with all four children including a two-month-old child, there was a pending investigation regarding the death of the infant, she was unable to provide an environment free from illegal substances, and she was unable to provide the necessary care, basic needs, supervision, or support for Children. Father admitted that he was granted primary custody of all three Children, Mother was not to have unsupervised parenting time until she completed at least ninety days of a rehab program, he intentionally gave all four children to her despite the order prohibiting her from having unsupervised parenting time, he advised that he needed a break from the children, and a family case manager visited Father's home and observed a machete on the floor, a child pick up the machete and touch the blade, little to no food in the home, no bedding or appropriate clothing for the boys, and human feces on the floor.

[4] On August 30, 2021, the court issued a dispositional order requiring Father to keep all appointments with any service provider; contact the family case manager every week; maintain suitable and sanitary housing with adequate food and bedding; maintain a legal source of income which may include public assistance; ensure Children are properly clothed, fed, and supervised; attend all scheduled visitations; and pay child support of ten dollars per week. In December 2021, Father relocated to Chicago and began residing with his mother.

[5] On October 4, 2022, DCS filed a petition to terminate Father’s parental rights. On February 23, 2023, Mother pled guilty to four counts of neglect of a dependent. On March 29, 2023, Mother pled guilty to dealing in methamphetamine and resisting law enforcement. On April 11, 2023, the court held a hearing at which Father appeared by telephone and with his counsel present in the courtroom. The court scheduled a factfinding hearing for June 20, 2023, and ordered Father to appear at the hearing in person. The court stated “the reason for that [Father] is my court reporters will be unable to transcribe your testimony if it [is] done over the telephone. They’ll [sic] be gaps in your testimony. And if there should come a time when a higher court might review my decision, we want to make sure that the record is perfectly clear as to what was said during the course of the hearing.” Transcript Volume II at 19.

[6] On June 20, 2023, the court held the scheduled factfinding hearing. Father did not appear in person but was represented by counsel. Father’s counsel stated there was no question that Father was notified of the hearing, moved for a continuance, and stated Father “does live in Illinois” and “apparently did not have the funds to get here” and “I’ve been trying to contact him this morning [] to see if he was on his way or if, I don’t know if it would be possible for him to participate by phone or video.” *Id.* at 34-35. DCS’s counsel responded “last week . . . the department [] text[ed] [Father] and offered him a bus pass or train ticket [] to ensure his arrival . . . for this hearing,” “he was given a deadline of Friday at noon so we had time to obtain that ticket and he never responded,” “I did email [Father’s counsel] and also let him know . . . that that was available

and we would make arrangements to pick him up at Waterloo or wherever the bus [] came in,” and DCS never heard from Father. *Id.* at 35. The court denied the motion for a continuance and admitted evidence. DCS presented testimony of, among others, Mother, DCS local office director Nick Molyneaux, family case manager Tandra Fisher (“FCM Fisher”), and M.F. who worked as a service provider at the Northeastern Center.

[7] On June 30, 2023, the court issued an order terminating Mother and Father’s parental rights. The court found that removal of Children on July 19, 2021, was based on: Father’s home was found to be unsanitary with feces observed on the floor; a machete was observed on the floor; Father permitted Children to be in the home of Mother in violation of the court’s order; and Father wrote a text message to DCS advising that he could not handle having all three children, and he was thinking about putting K.R.T. and K.L.T. up for adoption. It found Father attended 11 of 90 scheduled individual therapy sessions, 3 of 10 sessions to improve his parenting skills, 61 of 115 supervised visits with Children, and 2 of 5 scheduled family team meetings. It found Father moved to Chicago in December 2021, DCS was not advised of his relocation until after it occurred, Father did not keep in regular communication with the family case manager, he told the family case manager the reason he had not attended all scheduled services and parenting times was because of the distance from Chicago to Angola, the family case manager offered to change the location of service providers from Angola to Gary, Indiana, and Father declined this offer advising the family case manager that he preferred to have services provided through the

Northeastern Center. It found Father had no parenting time since March 2023, the Northeastern Center terminated Father's parenting times because of his failure to abide by all set rules, the Northeastern Center scheduled a meeting with Father in June to explain the steps that he had to take to have his parenting times with Children reinstated, and Father did not attend the scheduled meeting. It found that the family case manager and the court appointed special advocate recommended termination of Father's parental rights.

[8] The court further found that Mother was serving a fifteen-year prison sentence. It found "Father lives in Chicago with his mother[,] he not having the financial resources to have his own residence"; "Father, since the commencement of this case, has had three (3) different positions of employment, and, was unemployed on date of fact-finding hearing"; "Father has stated to [the family case manager] that he cannot handle all three (3) children"; "Father has stated to [the family case manager] that he has thought about putting the two boys up for adoption"; and "Father has completed none of the services [] which he has been requested to perform in order to help facilitate his reunification with [Children]."

Appellant's Appendix Volume II at 59-60. It further found that "[t]he [the family case manager] offered Father a means of transportation from Chicago to Angola to assist Father in receiving services but he declined the offer" and "[w]hen Father's parenting times with the children were terminated by the Northeastern Center during March, 2023, Father failed to attend a scheduled meeting to discuss the steps he must take to have his parenting times with the

children reactivated.” *Id.* at 60. The court concluded that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of Children and that termination of the parent-child relationships was in the best interests of Children.

Discussion

[9] Father asserts he had a due process right to attend and participate in the factfinding hearing and DCS never attempted to work toward reunification by engaging the Illinois child services agencies. He asserts that one witness, M.F., had a conflict of interest because she was a visitation supervisor and later became the foster placement for his twin sons. He also argues the evidence does not support certain findings.

A. *Due Process*

[10] 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*. Nevertheless, parents facing termination proceedings are afforded due process protections. *Id.* “Due Process has never been defined, but the phrase embodies a requirement of ‘fundamental fairness.’” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (citations omitted). “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 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 at 917). “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.* A parent is entitled to cross-examine witnesses, obtain witnesses or evidence, and introduce evidence. Ind. Code § 31-32-2-3(b).

[11] The record reveals that Father appeared by telephone at the April 11, 2023 hearing at which the court scheduled the June 20, 2023 factfinding hearing and ordered Father to appear at the hearing in person. FCM Fisher testified that DCS offered Father a bus or train ticket so that he could be present for the hearing. DCS presented evidence that Father was offered services of individual therapy, supervised visitation, and parenting classes through the Northeastern Center. FCM Fisher testified that, after Father moved to Chicago, she offered to transfer his services close to Gary, Indiana, and that Father stated he would continue with the Northeastern Center. Nick Molyneaux, a local office director for DCS, testified that DCS made accommodations for Father to come to Indiana to attend visits and provider appointments and that communicating with Father was very difficult. The court also heard testimony from M.F. that she was employed at the Northeastern Center, she supervised visits between

Father and Children until July 2022, the twin boys were placed with her in August 2022, she wished to adopt them, she stopped serving as a visitation supervisor before the twins were placed with her, and it would have been a conflict to supervise visits once they were placed with her. Father was represented by counsel at the evidentiary hearing, and his counsel cross-examined the witnesses and presented argument. Under these circumstances, we conclude that reversal on due process grounds is not warranted. *See In re C.C.*, 788 N.E.2d 847, 853 (Ind. Ct. App. 2003) (finding the risk of error caused by the trial court's denial of the request for a continuance of the termination hearing was minimal where the father's counsel represented him and cross-examined the witnesses and the court's decision to proceed in the father's absence did not deny him due process), *trans. denied*.

B. *Findings*

[12] Father challenges certain findings. He asserts there was no direct evidence he could not afford to live on his own or that he was unemployed. He argues a text message admitted into evidence was not properly authenticated and, without the message, the evidence did not support the findings that he had stated he could not handle all three Children and has thought about putting the boys up for adoption. He also argues that he lived three hours away from the service referral locations, DCS knew he had transportation issues, and it set him up to fail.

[13] 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).

[14] 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.* A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *In re D.D.*, 804

N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions or the conclusions do not support the judgment. *Id.* 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).

[15] 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*.

[16] We review a trial court's ruling on the admission of evidence for an abuse of discretion. *Pavlovich v. State*, 6 N.E.3d 969, 975 (Ind. Ct. App. 2014), *trans. denied*. Ind. Evidence Rule 901 provides: "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Absolute proof of authenticity is not required. *Pavlovich*, 6 N.E.3d at 976. The proponent of the evidence needs to establish only a reasonable probability that the document is what it is claimed to be. *Id.* Once this reasonable probability is shown, any inconclusiveness regarding the exhibit's connection with the events at issue goes to the exhibit's weight, not its admissibility. *Id.*

[17] The record reveals that Molyneaux testified that Father reached out to him by text message in July 2021. DCS introduced an exhibit consisting of a screenshot of a text message which stated:

I can't handle having all three kids so I'm thinking about putting the two boys up for adoption and [Mother] is threatening me about not letting her watch the kids so I'm going to take KK to the babysitter and tomorrow when you come here and remove the boys I won't do anything because I can't handle having all three kids.

Exhibits Volume V at 116. Father's counsel objected on the basis the message was not authenticated, and DCS's counsel stated that she would establish a foundation. She asked Molyneaux how he knew that the text message was from Father, and he answered: "Because I recognize the mother's name, and I recognize the circumstances, the context of that message. And, the content within it also [] made me recognize . . . who it involves and what case it's [] regarding." Transcript Volume II at 83. The court admitted the message. Based on the record, we cannot say the court abused its discretion in admitting the text message. *See Pavlovich*, 6 N.E.3d at 979.

[18] Further, when asked on cross-examination why Children were not moved to Illinois, Molyneaux testified that Children were already in kinship placement, they were tied with their community, communicating with Father was very difficult, and his participation has been almost absent. FCM Fisher testified that Father did not remain employed during the case. When asked if he was employed at the time of removal, she replied "he stated he was, but I never received a paycheck." Transcript Volume II at 123. When asked how many

jobs Father had reported to her throughout the case, she answered “he’s reported to me at least three.” *Id.* She indicated Father provided verification of one of those sources of income. When asked “does [Father] tell you how he affords to get to visits,” she replied affirmatively and stated “[h]is family gives him money.” *Id.* at 124. When asked what conclusion she would draw from that statement, she stated “[t]hat he doesn’t have any financial means himself to take care of himself or the children.” *Id.* She testified Father had been ordered to pay child support of ten dollars per week for Children and he told her that he lived with his mother. Also, the court found that Father attended 11 of 90 individual therapy sessions, 3 of 10 parenting skills sessions, 61 of 115 supervised visits, and 2 of 5 family team meetings. DCS presented testimony that his participation in services decreased each year. DCS was not informed of Father’s relocation to Chicago until after it occurred, he was not in regular communication with DCS, and FCM Fisher offered to transfer Father’s services significantly closer to where he lived in Chicago but he declined. FCM Fisher testified that Father’s services had been suspended or terminated multiple times and had been suspended since the end of March. She indicated she attempted to meet with Father, she scheduled a meeting in March and Father canceled, and she scheduled a meeting in June and Father did not show. She indicated she tried to have virtual contact with Father but he refused to have a virtual contact with her. Based on the record, we conclude the evidence clearly and convincingly supports the trial court’s findings and judgment.

[19] For the foregoing reasons, we affirm.

[20] Affirmed.

Riley, J., and Foley, J., concur.

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