

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

In the Termination of the Parent-Child Relationship of B.M.
(Minor Child), and
T.M. (Mother) and D.M. (Father),
Appellants-Respondents

v.

Indiana Department of Child Services,
Appellee-Petitioner

March 12, 2024

Court of Appeals Case No.
23A-JT-2485

Appeal from the Cass Circuit Court
The Honorable Stephen R. Kitts, Judge

Trial Court Cause No.
09C01-2305-JT-6

Memorandum Decision by Judge Bradford

Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] T.M. (“Mother”) and D.M. (“Father”) (collectively, “Parents”) are the parents of B.M. (“Child”), who was born in September of 2020. The Department of Child Services (“DCS”) became involved with Child after receiving a report that Child had been the victim of neglect and, on July 12, 2022, filed a petition alleging that Child was a child in need of services (“CHINS”). After Child was adjudicated to be a CHINS, the juvenile court ordered Parents to participate in certain services. Although Parents participated in some of the court-ordered services, Parents each suffer from cognitive issues and never reached the level of stability necessary to allow them to safely and successfully care for Child. DCS eventually petitioned to terminate Parents’ parental rights to Child. The juvenile court conducted an evidentiary hearing, after which it granted DCS’s termination petition. Parents challenge certain factual findings, contend that the evidence is insufficient to sustain the juvenile court’s order, and claim that they were denied due process because DCS had failed to provide them with adequate accommodations. We affirm.

Facts and Procedural History

[2] Child was born to Parents on September 29, 2020. On July 10, 2022, DCS received a report alleging that Child had been and was a victim of neglect due to the condition of Parents' home. After DCS representatives visited the home and found that it was unsafe for Child, Parents agreed to clean the home. Two days later, DCS representatives "returned to the home and found no improvement in the home conditions finding prescription medication, ibuprofen pills, cigarette butts [*sic*], spilled household cleaner[,] and other small items that presented a danger to the [C]hild littered through the home." Ex. Vol. p. 25. In addition, a knife was sitting on a table within Child's reach and "while there was food in the house for a day or two, [Parents] indicated [that] they would not be able to buy groceries" for approximately six more days. Ex. Vol. p. 25. That same day, DCS filed a CHINS petition, alleging neglect. On August 17, 2022, Parents admitted that Child was a CHINS, after which they were ordered to complete certain services aimed at improving the condition of their home and their ability to care for Child.

[3] As part of the court-ordered services, Parents completed parenting assessments with Jill Uceny, a therapist at Brighter Tomorrows. Uceny found that Mother "was elevated on the abuse scale which shows the potential for abuse" and had "no working ability to do the functional task of a parent." Tr. Vol. II pp. 72, 74. Uceny opined that Mother was suffering from "permanent, stagnant" intellectual impairment that was not going to change. Tr. Vol. II p. 90. Uceny further opined that Mother "would not be able to actually incorporate what

she's being taught and be able to sustain the information" successfully due to her cognitive issues. Tr. Vol. II p. 75. Uceny indicated that Mother did not

have any strengths to draw from, is the dilemma. And we've had some services ... that were teaching things that weren't understood. But the ability to sustain the information through time was also reflected that it wasn't possible. So, certain skills were being taught and then had to be re-taught because there wasn't an ability to hold onto applying that information. So, we have all risk factors on the table, and we have no ability to sustain the skills that have been taught to try to overcome those weaknesses.

Tr. Vol. II p. 78. Uceny concluded that given Mother's lack of parenting skills, Mother would require around-the-clock supervision of her parenting to ensure Child's safety.

[4] As for Father, Uceny opined that Father was suffering from personality disorder and schizophrenia, for which Father had failed to consistently take his medication. Father did not know how to perform normal parenting tasks, and the stress of attempting to parent Child would "lead him to likely dysfunctional parenting choices." Tr. Vol. II p. 84. Father also exhibited issues with anger and honesty. Uceny indicated that Father

came across in such a way where he thinks that he doesn't really have to work and he really doesn't have clean the house, and he really doesn't have to change the diaper and he doesn't have to do a lot of the things because, you know, these are things that he's not feeling up to or he doesn't really want to.... [S]o you would think that if you had a child in foster care this long, the reality would hit you, that you have to do some changes. You

have to get better at certain things. But he really doesn't think that he does have to.

Tr. Vol. II p. 88. Father also required constant prompting from an outside individual to hold him accountable, and Uceny opined that no amount of training or assistance would “fix that problem[.]” Tr. Vol. II p. 89.

[5] The juvenile court conducted an evidentiary hearing on DCS's petition on September 20, 2023. During this hearing, the juvenile court heard testimony from various service providers and Family Case Manager (“FCM”) Nicole Wheeler, who opined that termination of Parents' parental rights was in Child's best interests. Despite having been offered various services, Parents had struggled with recognizing what is developmentally appropriate for Child and, when necessary, redirecting Child's behavior. FCM Wheeler stated that she was concerned that the home conditions would continue to deteriorate and that something “catastrophic could happen to” Child while Mother was working due to Father's “lack of engagement and frequently putting his needs above” Child's needs. Tr. Vol. II p. 30. FCM Wheeler also voiced concerns about Parents' finances and lack of personal hygiene, as they chose not to wash themselves despite knowing how to. FCM Wheeler indicated that Parents had been given extra accommodation “since the beginning” in an effort to help them make the necessary progress despite their cognitive issues. Tr. Vol. II p. 48.

[6] Following the conclusion of the evidentiary hearing, the juvenile court issued an order terminating Parents' parental rights to Child. In this order, the

juvenile court made the required statutory findings, including that Child had been removed from Parents' care for more than six months, there was a reasonable probability that the conditions that resulted in Child's removal from Parents' home would not be remedied, termination of Parents' parental rights was in Child's best interests, and DCS had a satisfactory plan for the care and treatment of Child, that being adoption by the foster parents with whom Child had been placed since his removal from Parents' care.

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. Off. of Fam. & Child.*, 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 children. *Id.* “Termination of parental rights is proper where the children’s emotional and physical development is threatened.” *Id.* The juvenile court “need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship.” *Id.*
- [8] In reviewing termination proceedings on appeal, we will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Term. 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] Furthermore, it is well-settled that “mental or cognitive disabilities, standing alone, are not a proper basis for termination of parental rights.” *Z.B. v. Ind. Dept. of Child Servs.*, 108 N.E.3d 895, 902 (Ind. Ct. App. 2018) (citing *In re V.A.*, 51 N.E.3d 1140, 1147 (Ind. 2016)), *trans. denied*. “However, a court may consider these issues where ‘parents are incapable of or unwilling to fulfill their legal obligations in caring for their children.’” *Id.* (quoting *Egley v. Blackford Cnty. Dept. of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992)). “This is because ‘the purpose of terminating parental rights is not to punish parents, but to protect the children.’” *Id.* (quoting *Egley*, 592 N.E.2d at 1234).

I. Challenge to Factual Findings

[11] Parents challenge the trial court’s findings that Mother “has a cognitive disability and is low-functioning” and Father “has a mental health diagnosis.” Appellants’ App. Vol. II p. 108. Parents argue that these findings “were found without the benefit of any competent evidence on those issues in the form of a diagnosis and prognosis from a psychiatrist or psychologist.” Appellants’ Br. p. 20. Parents, however, do not point to any authority that indicates that such a diagnosis is necessary before a juvenile court can consider the effect a parent’s mental condition might have on their ability to care for a child. Here, while the trial court may not have received an official diagnosis from a psychiatrist or psychologist for either Mother or Father, the record contains ample other evidence that clearly establishes Parents’ mental capacities. The trial court’s findings in this regard are supported by the record.

II. Sufficiency of the Evidence

[12] Parents contend that the evidence is insufficient to support the termination of their parental rights to the Child. In order to support the termination of Parents’ parental rights to the 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). Parents argue that the evidence is insufficient to prove any of the requirements of subsection (B).

[13] 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.

[14] 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 [DCS]. 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), *trans. denied*.

- [15] Child was removed from Parents' home due to the unsafe and unsanitary conditions of the home. After Child had been adjudicated to be a CHINS, Parents were provided with home-based case-management services, parenting-education classes, and therapy. They were also provided the opportunity to visit with Child and were referred for a parenting assessment.
- [16] Parents, both of whom suffer from cognitive delays, were offered extensive home-based services, including assistance with budgeting, developmentally-appropriate parenting skills, hygiene, and chores. Parents met with their home-based services case manager "two (2) to three (3) times a week" for "two (2) to three (3) hours each time." Tr. Vol. II pp. 33, 34. The home-based case manager showed Parents how to properly clean the home and instructed them as to what chores should be done on specific days so that they could maintain cleanliness on a long-term basis. The provider also showed them how to address issues with their personal hygiene: washing their bodies and hair,

putting on clean clothes, and using deodorant. (FCM Wheeler, as well as the home-based case manager, created charts and showed Parents how to use the charts to track their progress for both cleaning and maintaining the home as well as their personal hygiene. While Parents eventually “showed for a small amount of time, a few weeks, that they could maintain that on their own[,]” FCM Wheeler observed that “long term, if nobody was there, uh, over the top of them reminding them that they needed to follow those things, uh, that they just stopped doing the chores and hygiene charts.” Tr. p. 12. While Parents were offered the opportunity to attend parenting-education sessions, Father chose not to attend any sessions and Mother chose to only attend “a couple.” Tr. Vol. II p. 45.

[17] Despite the services offered by DCS, Parents failed to maintain safe and sanitary housing. In August or September of 2022, Parents’ landlord chose not to renew their lease due to the home’s condition as well as “multiple instances of bed bugs and cockroaches.” Tr. Vol. II p. 13. Home-based service providers helped Parents secure different housing. At first, this apartment was

very clean. Tile floors were white, ... the refrigerator was in brand new condition. The counter and stove were in brand new condition. As [Parents] lived in the home as the months went on, the condition of the tile floor went from white to a dull gray ... and there was bits and pieces of food and other items on the floor. [T]here was [also] an instance where [Mother] had gotten sick and ... had vomited and defecated all over the floor. There was ... still remnants of that ... being splashed on the walls. There were missing ceiling tiles and they had trouble keeping their laundry maintained.

Tr. Vol. II p. 15. In addition, Father was smoking in the home, leaving cigarettes within Child's reach. Parents were evicted from their apartment in June or July of 2023, after, in addition to the poor conditions of the apartment, Father had been caught smoking in the apartment in violation of Parents' lease, been caught "urinating in the elevator, defecating in the common areas of the apartment building[,]” and been alleged to have "flooded his apartment to the apartment below due to a disagreement with the tenant below.” Tr. Vol. II p. 14. After Parents had moved to a new residence, FCM Wheeler visited the residence and observed pieces of paper on the floor, "[t]he whole home had dirty clothing on the floor[, t]here was a feces stain on the carpet[, t]here was food spillage down the cabinets and other items strewn through the home.” Tr. Vol. II p. 16. Parents blamed each other for not keeping the home clean.

[18] Despite their struggles to maintain a sanitary home, Parents were initially given the opportunity to visit with Child in their home. One of these visits, however, was canceled "due to human feces being left throughout the home.” Ex. Vol. p. 79. Father also would leave his "psychotropic medication” and cigarette and chewing tobacco waste within Child's reach. Tr. Vol. II p. 23. Parents also struggled to maintain personal hygiene, with one of Father's visits with Child being canceled because of Father "soiling himself.” Ex. Vol. p. 77. After visits were moved to a different location, Parents struggled to focus on Child, with Father often leaving to smoke and both having to be reminded what was developmentally appropriate for Child. Both struggled with providing basic

care for Child, such as changing his diaper or cutting up his food into small pieces to prevent choking.

[19] Parents also exhibited difficulties maintaining their finances. Father received \$900.00 in social security benefits per month and “had a payee ... who covers his half of the bills.” Tr. Vol. II p. 17. Mother worked “anywhere from twenty (20) to forty (40) hours plus a week” at Subway, with her earnings of approximately \$524.00 per paycheck being deposited into Parents’ joint account. Tr. Vol. II p. 17. Unless a service provider was monitoring them, Parents would withdraw large sums of cash from ATMs, but “would not have anything to show for it.” Tr. Vol. II p. 18. Father would purchase cigarettes and lottery tickets with the money, making it necessary for Parents to visit a food pantry to get food. When Parents received a \$6000.00 tax refund, service providers helped them to use approximately \$900.00 to purchase household furniture and budgeted for the rest to be saved as a “rainy-day fund.” Tr. Vol. II p. 18. However, within a week, Father had spent all of the remaining funds, admittedly “going to the gas station five (5), six (6) times a day to purchase five (5), six (6) or more, fifty (50) dollar scratch-off lottery tickets.” Tr. Vol. II p. 19. Even when Mother obtained her own bank account, Father would access the funds therein, often to purchase lottery tickets.

[20] FCM Wheeler opined that at least some of Parents’ inability to address their parenting deficiencies and inability to maintain a sanitary home and their finances “ha[d] to do with the cognitive ability.” Tr. Vol. II p. 29. In an attempt to accommodate Parents’ cognitive issues, DCS and service providers

worked with [Parents] and showed them exactly what we, the skills that they were learning. We provided them with hand-over-hand instruction, [then] guidance as they performed those tasks on their own. [DCS and service providers] set them up with multiple ... charts with words and pictures of specific tasks for cleaning and hygiene. They were able to follow it for short periods of time ... and then they would throw away the charts or lose the charts and then revert back to what they were doing prior to our involvement. During that time as well, they would get like, redirection and ... they would be taught that skill again frequently at their level.

Tr. Vol. II p. 40. DCS and service providers also “simplified ... what they need to do, broken it up.” Tr. Vol. II p. 42. While parents who do not experience cognitive delays may only require being instructed on or shown a skill once or twice, Parents “have been given multiple instances of ... being shown, being taught hand-over-hand, [being] redirected, re-taught again and still have not been able to do and show long[-]term use of those skills.” Tr. Vol. II p. 41.

[21] Uceny opined that, given Parents’ cognitive issues, they would not be able to adequately care for Child. In addition, DCS provided overwhelming evidence that, despite significant efforts from FCM Wheeler and the other service providers, Parents had failed—and would be unable—to remedy the conditions that had led to Child’s removal from their care. Parents’ argument 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.

III. Due-Process Claim

- [22] Generally, “for a parent’s due process rights to be protected in the context of termination proceedings, DCS must have made reasonable efforts to preserve and/or reunify the family unit in the CHINS case (unless the no reasonable efforts exception applies).” *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*. It is also true, however, that “DCS is not required to provide parents with services prior to seeking termination of the parent-child relationship,” *id.* at 612, and that “[w]hat constitutes ‘reasonable efforts’ will vary by case.” *Id.* at 615.
- [23] To the extent that Parents claim that the termination of their parental rights violates due-process considerations, Parents assert that DCS should have been required to obtain an official diagnosis regarding their cognitive functions from a psychiatrist or psychologist and to make reasonable accommodations based on that diagnosis. Although substantial evidence presented during the evidentiary hearing related to Parents’ cognitive function, Parents have not pointed to anything in the record to even suggest that they raised this assertion before the juvenile court. Parents, therefore, have waived this issue for appellate review. *See In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016) (“[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal.”).
- [24] In any event, ample evidence regarding Parents’ cognitive issues was presented to the juvenile court, none of which Parents assert was inaccurate. The record

demonstrates that DCS was well-aware of Parents' cognitive issues and provided Parents with reasonable accommodations as it related to the services provided. Even with the extra attention given to Parents by way of these accommodations, Parents were unable to remedy the conditions that led to Child's removal. Based on the record before us, we conclude that DCS's efforts at reunification were reasonable under the circumstances.

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

Altice, C.J., and Felix, J., concur.

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