

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
S.B.L. and J.L. (Minor Children)
and S.L. (Father)
S.L. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

March 25, 2021

Court of Appeals Case No.
20A-JT-1672

Appeal from the
Jefferson Circuit Court

The Honorable
Carl H. Taul, Special Judge

Trial Court Cause Nos.
39C01-2002-JT-7
39C01-2002-JT-8

Vaidik, Judge.

Case Summary

- [1] S.L. (“Father”) appeals the termination of his parental rights to his children. We affirm.

Facts and Procedural History

- [2] S.P. (“Mother”) is the biological mother of S.B.L., born in November 2015, and J.L., born in October 2017 (“the children”). Father is the biological father of J.L., and S.B.L.’s biological father is unknown. Because Mother does not appeal the termination of her parental rights to the children, we focus on the facts relating to Father.
- [3] When J.L. was born in October 2017, he and Mother tested positive for methamphetamine. Before Mother was released from the hospital, the Department of Child Services (DCS) removed both children from her and placed them in foster care. DCS filed a petition alleging the children were in need of services (CHINS) in Jefferson Circuit Court.
- [4] In November 2017, Father was charged in Jennings County with battering Mother when she was pregnant with J.L. (in June 2017) (hereinafter, “the felony case”). Father has failed to appear on several occasions in the felony case, resulting in him being arrested on warrants. The felony case is still pending, with a jury trial scheduled for April 2021.
- [5] Following a CHINS fact-finding hearing in February 2018, the trial court found the children to be CHINS. Specifically, the court noted Father admitted he

didn't have custody of the children when they were removed and "couldn't ensure the[ir] safety in [M]other's care." Ex. Vol. III, p. 30. Following a dispositional hearing, Father was ordered to, among other things, "[m]aintain suitable, safe and stable housing," attend all scheduled visits with the children, participate in any programs recommended by the family case manager (FCM), not commit any acts of domestic violence on "anyone," avoid using any illegal controlled substances, complete a substance-abuse assessment and follow any recommended treatment, and submit to random drug screens. *Id.* at 43, 44.

[6] In May 2018, the trial court held a hearing to address a no-contact order issued in the felony case. The court in the felony case deferred the issue to the CHINS court, which modified the no-contact order "for the sole purpose of allowing" Father to exercise supervised parenting time with the children. *Id.* at 77, 79.

[7] In October, DCS placed the children with Mother for a trial home visit. At a permanency hearing held later that month, the trial court found the children were progressing well with Mother and that Father was complying with the children's case plan, participating in Fatherhood Engagement, and visiting the children weekly. The permanency plan was reunification of the children with Mother.

[8] In February 2019, however, DCS removed the children from Mother due to safety concerns and returned them to the same foster-care placement, where they have remained throughout this case.

- [9] At a review hearing in April, the trial court found Father was complying with the children's case plan and participating in Fatherhood Engagement. However, the court noted Father, who had recently started weekly drug screens, tested positive for marijuana five times in February and three times in March.
- [10] In July, the trial court changed the permanency plan to adoption. The court found Father was not complying with the children's case plan:

[Father's] home is no where close to being ready. There are exposed wires, exposed insulation, and walls not finished. Debris is scattered around the home that would not be safe for the children. In April, he was hospitalized for heart problems . . . which resulted in missed [drug] screenings and visits. He was asked to screen on July 12, 2019 but refused. [Father] is awaiting a jury trial for his criminal case in Jennings County.

Id. at 50.

- [11] At a review hearing in October, the trial court again found Father was not complying with the children's case plan. *Id.* at 61. The court noted Father had five positive drug screens and that his home was "still not fit for a child to live in." *Id.*
- [12] At a review hearing in January 2020, the trial court again found Father was not complying with the children's case plan:

[Father] has had 11 screens out of 19 attempts of which seven were positive for illegal substances. He has met with Father[hood] Engagement one time in December, no appointments in November and two of four appointments in October. Provider reports that progress has been non existent.

[Father] has visited the children. [Father] has visited but there are concerns with one son refusing to go on visits; drug activity in the home; drug users visiting the home; and Father refusing to visit if both children are not present.

* * * * *

Father does not have appropriate housing and has pending criminal charges in Jennings County.

Id. at 63-64.

[13] On February 4, Father was charged in Jennings County with battering his adult daughter (in November 2019), and a warrant was issued for his arrest (hereinafter, “the misdemeanor case”). Later that month, on February 27, DCS filed a petition to terminate Father’s parental rights to the children. An initial hearing was held in April, but Father did not appear because he had been “picked up” on warrants in the misdemeanor case and the felony case (failure to appear) on April 17. Tr. p. 5. Father pled guilty in the misdemeanor case on April 30. The trial court held another initial hearing on the termination petition in May; Father was still in jail but appeared telephonically.

[14] Father was released from jail in late June, and a fact-finding hearing was held on July 10. At the hearing, the FCM testified Father had thirty-seven positive drug screens (thirteen of which were positive for methamphetamine) between February 2019 and April 2020, and the trial court admitted the results into evidence. *Id.* at 82. The FCM said when she asked Father about his positive screens for methamphetamine, he blamed them on his “new prescribed

inhaler.” *Id.* at 78. In addition, the FCM testified Father was ordered to undergo a substance-abuse evaluation and any recommended treatment as part of the dispositional order in 2018, but he never did. Finally, the FCM testified that although Father had been regularly attending visits with the children in both supervised and monitored settings, he didn’t visit the children “at all” between January 2020 and when he was arrested on April 17. *Id.* at 119. After his release from jail in late June, Father visited the children on July 6. *See id.* at 42.

[15] Father’s home-based caseworker testified he consistently participated in Fatherhood Engagement from May 2018 until about March 2019, when his participation started becoming sporadic and she noticed a change in his behavior. Specifically, the home-based caseworker testified Father went from attending four sessions a month to just one. She observed this corresponded to when Father started testing positive for drugs. Indeed, she thought Father was impaired a “couple of times.” *Id.* at 100.

[16] The court-appointed special advocate testified it was in the children’s best interests for Father’s parental rights to be terminated. Specifically, he said in the two-and-a-half years he had been on the case, things “ha[d] not gotten better” but had gotten “worse and worse.” *Id.* at 138.

[17] Father testified he had no explanation for his thirty-seven positive drug screens because he didn’t use drugs.

[18] Following the hearing, the trial court entered findings and conclusions terminating Father’s parental rights to the children. Specifically, the court found Father’s “lack of suitable housing,^[1] continued criminal involvement, pending Level 5 felony charges, continued drug use, and failure to comply with services that have now been offered for nearly 3 years in order to help him reunify with his children” supported the termination of his parental rights. Appellant’s App. Vol. II p. 114.

[19] After filing a notice of appeal, Father filed a petition asking this Court to stay the proceedings and remand the case to the trial court so he could conduct discovery and file an Indiana Trial Rule 60(B) motion. The basis of Father’s petition was DCS had recently issued a press release that Tomo Drug Testing—

¹ The record shows Father’s house was on the same property as his mother’s house. After Father was released from jail in late June 2020, he said he wanted to move the children into his mother’s house. The trial court made the following unchallenged finding about this arrangement:

28. Since his release from jail in late June, 2020, [Father] began to tell DCS and CASA that he intended to move the boys into his elderly mother’s home. While the home appears to be otherwise suitable for the children, this is the home where his adult daughter, her young children, and sequential boyfriends have also lived at various times throughout the underlying CHINS case. [Father] has suggested to CASA that this daughter is the cause of his positive drug tests. He believes she has been surreptitiously spiking his morning coffee with meth. He had previously suggested that his positive tests were the result of physical contamination of that house with drug residue. He has also related to both CASA and [his home-based caseworker] that he discovered a large bag of hypodermic needles in his daughter’s bedroom and a “meth pipe” in the shared family car. Recently [Father] pled guilty in Jennings County to striking this adult daughter and he subsequently served jail time there. Given the reported history of drug involvement in the home by his adult daughter and also given the history of domestic violence between [Father] and his daughter who has lived in the home at various times throughout the underlying CHINS proceedings, DCS does not believe [Father’s] mother’s home to be an appropriate home for the boys.

Appellant’s App. Vol. II pp. 111-12.

which collected (but did not test) Father’s samples²—had falsified “drug-screening records” in another county. *See* Appellant’s Verified Petition to Stay Proceedings, Ex. C, No. 20A-JT-1672 (Dec. 10, 2020). According to the press release, the validity of the testing by Redwood Toxicology Laboratory was not affected; rather, the issue involved an incident where Tomo (Redwood’s subcontractor) falsely reported a client did not show up for testing. *Id.* This Court’s motions panel denied Father’s petition to stay, following which the parties submitted their briefs.

Discussion and Decision

[20] Father makes two arguments. First, he “renew[s] his request to return to the termination court to file a motion under Indiana Trial Rule 60(B) to challenge the admissibility of the drug screen reports in determining whether [his] parental rights should have been terminated.” Appellant’s Br. p. 16. Second, he argues the trial court erred in admitting his drug-screen results into evidence under *In re K.R.*, 154 N.E.3d 818 (Ind. 2020). But as the State points out, Father

² Father does not specifically challenge the thirty-seven positive drug screens. Rather, he appears to challenge only a handful:

Yet several of Father’s drug screens were incomplete, missing certification from T[omo] that Father was the person from whom the lab collected the sample. [*See* R. Vol. 4, pgs. 39, 64, 72]. Moreover, Redwood noted on two of the reports that the results suggested the samples collected by T[omo] were contaminated, and a very high methamphetamine level detected on a third report implied the same. [*See* R. Vol. 4, pgs. 130-34, 143-48].

Appellant’s Br. p. 15; *see also id.* at 8-10. Nevertheless, Father claims the fact that some of Tomo’s records were found to have been falsified “calls into question every report generated by T[omo].” *Id.* at 16. While the allegations against Tomo are concerning, as the State points out, Father has presented no evidence calling into question the validity of the testing performed by Redwood.

challenges none of the court's findings or conclusions unrelated to his drug-screen results, including the finding Father never completed a substance-abuse assessment and any recommended treatment as ordered by the court in 2018. *See* Appellee's Br. pp. 11, 18, 19-20. Even assuming the court shouldn't have relied on Father's drug-screen results in terminating his parental rights, the court's other findings and conclusions are sufficient to support the termination of his parental rights.

[21] A petition to terminate parental rights must allege, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013).

[22] Here, the trial court concluded (1) there is a reasonable probability the conditions that resulted in the children's removal or the reasons for placement outside the home will not be remedied; (2) termination is in the best interests of the children; and (3) there is a satisfactory plan for their care and treatment. The court's unchallenged findings support these conclusions. That is, the court found Father (1) never obtained suitable housing; (2) never completed a substance-abuse assessment and any recommended treatment; (3) did not complete Fatherhood Engagement; (4) has continued to be involved in criminal activity, including battering his adult daughter in November 2019 and failing to appear in the felony case on several occasions; and (5) did not visit the children between January 2020 and when he was arrested on April 17. In addition, the court found termination is in the children's best interests because Father has had nearly three years to achieve reunification but has failed to do so. Meanwhile, the children have been with the same foster family, where they are "flourishing." Appellant's App. Vol. II p. 114. Finally, the foster family plans to adopt the children. Accordingly, we affirm the termination of Father's parental rights to the children.

[23] Affirmed.

Bradford, C.J., and Brown, J., concur.