

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 M.F., Father, C.S., Mother,
and D.F. and Ma.F., Minor
Children,

M.F.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

August 2, 2022

Court of Appeals Case No.
22A-JT-76

Appeal from the
Grant Superior Court

The Honorable
Dana J. Kenworthy, Judge

Trial Court Cause Nos.
27D02-2101-JT-16
27D02-2101-JT-17

Molter, Judge.

- [1] M.F. (“Father”) and C.S. (“Mother”) are the parents of D.F. and Ma.F. (“Children”). After Mother admitted allegations she had mental health issues, domestic violence issues, and that one of the Children was born drug exposed, Children were adjudicated children in need of services (“CHINS”). Father waived his right to factfinding and agreed with Mother’s admission. The juvenile court later terminated both Parents’ parental rights, and only Father appeals. He contends the juvenile court erred in terminating his parental rights because the Indiana Department of Child Services (“DCS”) violated Indiana Code section 31-34-6-2 when it failed to consider placement of Children with a relative as an alternative to termination of parental rights. Finding no error, we affirm.

Facts and Procedural History

- [2] Father and Mother are the parents of D.F., who was born July 22, 2018, and Ma.F., who was born June 21, 2019. Appellant’s App. Vol. 1 at 18, 22. On June 23, 2019, two days after Ma.F. was born, family case manager (“FCM”) Heather Fritch went to the hospital due to a report made to DCS that Father and Mother had been involved in a physical altercation at the hospital. At that time, FCM Fritch spoke with Mother, who had a black and blue mark on her arm as a result of the altercation, and left her card with Mother. Because there was already an open assessment due to the fact Mother had tested positive for marijuana when she gave birth to Ma.F., but they were still waiting on results

from the baby's cord blood screen, DCS did not remove Children on that date. DCS and Mother then entered into a safety plan to protect Children.

[3] On July 9, 2019, FCM Fritch received a call from Mother and went to the home because Mother was very upset, had been crying, and stated she needed help. Mother told FCM Fritch that she was overwhelmed, had contemplated suicide, was unable to provide further care to Children, and wanted someone to adopt Children. As a result of Mother's statements, FCM Fritch took Mother to Cornerstone, a mental health facility, where she was admitted for an assessment and a seventy-two-hour hold. At that time, FCM Fritch tried to reach Father but was unsuccessful, and his whereabouts were unknown. Mother told FCM Fritch that "she had no family at all" and approved Children being placed in foster care. Tr. Vol. 2 at 118; Ex. Vol. at 24, 27. Children were removed and placed in foster care on that date.

[4] On July 11, 2019, FCM Fritch was able to speak with Father, and at that time, he told her that he did not have a place to live and did not have a source of income. After Children were removed, Father's mother, A.W. ("Paternal Grandmother"), and Father's brother, M.M. ("Uncle"), showed interest in having the Children placed with them. However, FCM Fritch testified that both were disqualified for placement. Specifically, Paternal Grandmother lived out of state, and she was disqualified from having Children's placement because she had "two or three previous substantiated Indiana DCS cases related to neglect and physical discipline." Tr. Vol. 2 at 117–18, 143–44. Uncle was disqualified because he had a drug-related criminal history, as well as domestic

battery and criminal mischief convictions. Neither Paternal Grandmother nor Uncle made any later contact with FCM Fritch to seek a waiver for Children's placement after their initial disqualification. Neither Father nor Mother provided additional options for relative placement to FCM Fritch, nor did they request the trial court to change placement to relative care during her time on the CHINS case.

[5] FCM Cierra Balsano began working with the family in August 2019 and continued working with the family until about August 6, 2021. While she was assigned to the case, FCM Balsano received requests only from two paternal relatives regarding placement of Children, Paternal Grandmother and Father's Great-Aunt, C.W-M ("Great-Aunt"). Great-Aunt contacted FCM Balsano in September 2020 and requested that Children be placed with her, but she was initially unable even to identify the names of Children.

[6] FCM Balsano spoke with Father and obtained a release from him so that she could speak further with Great-Aunt. FCM Balsano followed up with Great-Aunt and sent fingerprint and background-check paperwork to her in January 2021. But Great-Aunt never returned the paperwork to FCM Balsano.

[7] Further, FCM Balsano advised both Great-Aunt and Paternal Grandmother in January 2021 that while DCS would not request moving Children out of their long-term foster home, Father or his attorney could request a placement hearing. FCM Balsano also told Father he could have his attorney file a

motion to seek modification of placement of Children, but there is no indication that he ever did so.

[8] When Children were removed from her care, Mother told a counselor that she knew “she was not ready to have her children back,” but she wanted a female paternal relative to adopt Children. *Id.* 49, 50, 64, 65. She stated that her intent was for the relative to adopt Children, and after Mother had her affairs in order, to return Children to Mother’s care. DCS discovered that the relative with whom Mother wanted Children placed so that she could later regain custody was Great-Aunt.

[9] Due to Father’s failure to participate in and complete the services ordered by the juvenile court and his repeated criminal acts and resultant incarceration, DCS filed a petition to terminate his parental rights. After a factfinding hearing, the juvenile court issued an order terminating Father’s parental rights to Children.

[10] In its order, the juvenile court found that Father has considerable criminal history, and at the time of termination, he had several active warrants in Grant County. Father moved to Illinois in 2020 and was arrested there and incarcerated at Hill Correctional Center in May 2020. He was convicted of “Aggravated Use of an Unlicensed Weapon” and had a projected release date in April 2022, after which he will be on mandatory supervised parole until May 2024. Appellant’s App. Vol. 2 at 106.

[11] Father had the opportunity from July 2019 through May 2021, when he was not incarcerated, “to engage in services and work toward reunification with [Children],” but his “priorities were elsewhere, namely with relationships with different females and with continuing criminal behavior.” *Id.* at 108.

Throughout the CHINS case, Father never had stable housing and a minimal employment history. Father failed to comply with dispositional orders, continued to demonstrate instability and a pattern of repeated criminal conduct, and failed to show a commitment or ability to effectively parent Children.

[12] The juvenile court concluded that there was a reasonable probability that the conditions that resulted in Children’s removal and continued placement outside the home will not be remedied and continuation of the parent-child relationship posed a threat to Children’s well-being; termination of parental rights was in Children’s best interests, and there was a satisfactory plan for the care and treatment of Children, that being adoption. Father now appeals.

Discussion and Decision

[13] Father argues that the juvenile court erred when it failed to consider placement of Children with relatives as an alternative to termination and that, under Indiana Code section 31-34-6-2, the court was required to do so. Initially, we note that Father does not raise any challenge to the juvenile court’s findings of fact, conclusions of law, or its ultimate decision to terminate his parental rights. Because he failed to challenge any of the findings or conclusions, Father has waived any claim of error related to the findings and conclusions. *See In re C.C.*, 170 N.E.3d 669, 675 (Ind. Ct. App. 2021) (holding that mother waived any

argument on appeal that DCS failed to prove by clear and convincing evidence the allegations in petition to terminate her parental rights where she did not challenge trial court's findings of fact and conclusions thereon as clearly erroneous).

[14] Indiana Code section 31-34-6-2 provides:

(a) A juvenile court or [DCS] shall consider placing a child alleged to be a [CHINS] with a suitable and willing relative or de facto custodian of the child before considering any other placement for the child.

(b) A juvenile court or [DCS] shall consider placing a child described in subsection (a) with a relative related by blood, marriage, or adoption before considering any other placement of the child.

(c) Before a child is placed with a relative or de facto custodian, a home evaluation and background checks described in IC 31-34-4-2 are required.

Further, Indiana Code section 31-34-4-2 states in relevant part:

(a) If a child alleged to be a [CHINS] is taken into custody under an order of the court under this chapter and the court orders out-of-home placement, [DCS] is responsible for that placement and care and must consider placing the child with a:

(1) suitable and willing relative; or

(2) de facto custodian;

before considering any other out-of-home placement.

....

(e) . . . [DCS] may not make an out-of-home placement if a person [currently residing in the location designated as an out-of-home placement] has:

(1) committed an act resulting in a substantiated report of child abuse or neglect; or

(2) been convicted of a nonwaivable offense, as defined in IC 31-9-2-84.8 or had a juvenile adjudication for an act that would be a nonwaivable offense, as defined in IC 31-9-2-84.8 if committed by an adult.

Ind. Code § 31-34-4-2(a), (e).

[15] Father specifically argues that DCS violated the statutory requirement to consider placement with a relative before placing Children with the foster parents. He asserts that Paternal Grandmother, Uncle, and Great-Aunt were all identified as possible relative placements for Children, but that DCS never revisited them as alternative placements after they were initially rejected based on their background checks.

[16] However, we find that Father has waived this issue because he failed to object or raise the issue that DCS violated the statutory requirement before the trial court. “It is axiomatic that an argument cannot be presented for the first time on appeal.” *A.S. v. Ind. Dep’t of Child Servs.*, 175 N.E.3d 318, 322 (Ind. Ct. App.

2021) (citing *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015)). “[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.” *Plank v. Cmty. Hosps. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). Because Father did not raise this issue to the trial court, this argument is waived for purposes of appeal. Waiver notwithstanding, we address his claim.

[17] Looking at the evidence presented at the factfinding hearing, Father’s argument fails. It is clear from the testimony given by FCM Fritch and FCM Balsano that DCS did consider placement of Children with Paternal Grandmother and Uncle at the time Children were removed from the home in July 2019. But both were disqualified from placement after background checks were performed. Paternal Grandmother lived out of state and was disqualified because she had “two or three previous substantiated Indiana DCS cases related to neglect and physical discipline.” Tr. Vol. 2 at 117–18, 143–44. Uncle was disqualified because he had a drug-related criminal history, as well as domestic battery and criminal mischief convictions. Neither Paternal Grandmother nor Uncle made any later contact with FCM Fritch to seek a waiver for Children’s placement after their initial disqualification.

[18] FCM Balsano testified that she received requests from Great-Aunt about placement of Children in September 2020 and from Paternal Grandmother in January 2021. When Great-Aunt made her request, FCM Balsano sent Great-Aunt fingerprint and background-check paperwork required under Indiana Code section 31-34-4-2(d). *Id.* at 158–59, 161; *see* Ind. Code § 31-34-4-2(d) (“ . . .

before placing a child in need of services in an out-of-home placement, the department shall conduct a criminal history check of each person who is currently residing in the location designated as the out-of-home placement.”). Great-Aunt never returned the paperwork. Further, FCM Balsano advised both Great-Aunt and Paternal Grandmother in January 2021 that DCS would not request moving Children out of their long-term foster home because of their strong bond with the foster parents, with whom Children had been placed for almost two years, but that Father or his attorney could request a placement hearing. FCM Balsano also told Father he could have his attorney file a motion to seek modification of placement of Children, but there is no indication that he ever did so.

[19] Therefore, contrary to Father’s contention, DCS did consider placement of Children with Father’s relatives in accordance with the statute. After learning of the relatives’ interest in having Children placed with them, DCS took affirmative steps to see if such placement would be possible. But the relatives were either disqualified after background checks or never even returned the paperwork so that a background check could be completed. The evidence showed that DCS did not violate Indiana Code section 31-34-6-2, and we affirm the trial court’s judgment.

[20] Affirmed.

Mathias, J., and Brown, J., concur.