MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary Termination of the Parent-Child Relationship of B.E., et al. (Minor Children)

and

R.E. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

March 2, 2021

Court of Appeals Case No. 20A-JT-1828

Appeal from the Wells Circuit Court

The Honorable Kenton W. Kiracofe, Judge

Trial Court Cause Nos.
90C01-1912-JT-49
90C01-1912-JT-50
90C01-1912-JT-51

Bailey, Judge.

Case Summary

[1] R.E. ("Father") appeals from the order terminating his parental rights to B.E., E.E., and T.E. (the "Children"). Father focuses on the sufficiency of the evidence supporting the decision to terminate his parental rights to B.E. and E.E., his biological children. He conditionally addresses T.E., his legal child.

[2] We affirm.

Facts and Procedural History

[3] Father was married to Ta.E. ("Mother"). During the marriage, B.E. was born in August 2010, E.E. was born in October 2013, and T.E. was born in March 2016.[1] It was later determined that Father was not the biological Father of T.E.

[4] In 2016, Father and Mother had separate residences and were in the process of dissolving their marriage. B.E. and E.E. spent time at both residences. T.E. resided only with Mother. In September 2016, the Wells County Department of Child Services ("DCS") received a report regarding B.E. and E.E. Following an investigation, B.E. and E.E. were detained and placed in foster care.

[5] In October 2016, DCS filed petitions alleging that B.E. and E.E. were Children in Need of Services ("CHINS"). Shortly thereafter, Father's and Mother's marriage was dissolved. In January 2017, Father admitted that B.E. and E.E.

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[1] Mother consented to the termination of her parental rights and she does not actively participate on appeal.

were CHINS. Among the stipulated facts was that Father's residence contained locks on the outside of bedroom doors, which were at times used to enforce a time out for a child in the room. Father reported that he was part of a nudist society and allowed his children to be naked whenever they wanted. Father's fifteen-year-old son stated that Father's adult son sometimes masturbated in parts of the residence where he could be seen by others. Father's fifteen-year-old son would sometimes shower with B.E. and E.E.

[6] Father agreed that he could benefit from services, including services "to address parenting techniques that would be effective" for B.E. and E.E. Ex. Vol. 5 at 30. The trial court ordered Father to participate in several services. The court specifically ordered Father to provide B.E. and E.E. "with a safe, secure and nurturing environment that is free from . . . neglect" and to "be an effective caregiver who possesses the necessary skills, knowledge, and abilities to provide [B.E. and E.E.] with this type of environment on a long-term basis[.]" *Id.* at 32.

[7] B.E. and E.E. initially remained in foster care. In October 2017, B.E. and E.E. began living with Mother for a trial home visit. During the trial home visit, Mother's boyfriend molested B.E. and E.E. Mother also violated the terms of the trial home visit by taking B.E. and E.E. outside of the State of Indiana. Mother was found in Michigan with the Children and Mother's boyfriend. Mother's boyfriend eventually pleaded guilty to sexually abusing B.E. and E.E.

[8] The Children were placed in foster care and, in August 2018, DCS filed a petition alleging that T.E. was a CHINS. T.E. was later adjudicated a CHINS.

[9] In December 2019, DCS petitioned to terminate Father's parental rights as to the Children. In May 2020, a fact-finding hearing was held, at which DCS presented evidence to support its ultimate plan of adoption for the Children.

[10] At the hearing, there was evidence that B.E. underwent a neuropsychological evaluation in November 2018, at which point B.E. was eight years and two months old. The evaluating neuropsychologist, Dr. Barbara Gelder ("Dr. Gelder"), determined that B.E. had social/emotional functioning at the level of a child who was two years and ten months old. B.E.'s emotional profile was "significant for clinical levels of inattention, anxiety, and problematic adaptive functioning." Ex. Vol. 5 at 2. Her overall neuropsychological profile was consistent with several diagnoses, including "Other Specified Trauma and Stressor Related Disorder," "Developmental disorder of speech and language, unspecified," and "Attention or concentration deficit." *Id.* at 4. At the hearing, Dr. Gelder explained that B.E.'s history of trauma "produces . . . what look like behavior issues . . . that are related to the trauma," which "requires a different way of parenting." Tr. Vol. 2 at 45. Dr. Gelder testified that B.E. would have ongoing struggles in her daily life such that B.E. would "probably . . . need someone to be her legal guardian . . . the day that she turns eighteen." *Id.*

[11] According to Dr. Gelder, B.E.'s caregivers "should be made aware of her diagnoses" because "her social adaptive functioning is lower than her calendar age, and is actually consistent with some of her behavioral difficulties," which would be "important to consider . . . when determining possible consequences for her misbehaviors." Ex. Vol. 5 at 4. Dr. Gelder explained that B.E.'s daily

life needs "as much structure, consistency and routine as possible," with a caregiver's attention to helping B.E. "organize herself and her environment in an effective and appropriate way." *Id.* Dr. Gelder opined that if B.E. should return to a parent's care, B.E. "and her parent will need considerable in-home services for an extended period of time" and her parent would "need parenting skills to deal with a child with special needs" because children with B.E.'s special needs "are much more difficult to parent, and may not consistently respond well to traditional behavior[-]management practices." *Id.* at 6.

[12] B.E.'s therapist, Arlene Kuntzman ("Kuntzman"), testified that B.E. showed "signs of PTSD from sexual abuse" and "had many sexualized behaviors" as well as "anger problems" and issues with "affect regulation." Tr. Vol. 2 at 137. When initially working with B.E., Kuntzman's therapeutic goals included working on bodily boundaries. Kuntzman noted that B.E. tended to hug strangers. Although B.E. made progress in therapy, B.E. was "still . . . overly willing to go with strangers or anybody," which was "of large concern." *Id.* at 139. B.E. eventually exhibited fewer sexualized behaviors, but remained "very much a people-pleaser" with "a tendency to do whatever anybody asks of her because she still doesn't have firm boundaries, so if someone asked her to do something, she would probably still do it[.]" *Id.* at 140. B.E. still struggled to "understand her own body" and "personal boundaries about her own body[.]" *Id.* B.E. also scored an eight out of ten on an Adverse Childhood Experiences ("ACE") scale, which indicated a likelihood of adverse adult experiences and a high risk for "getting involved in . . . abusive relationships," including sexually

abusive relationships. *Id.* at 142. B.E. was also "at high risk for having severe health problems," with a "high risk for depression and suicide." *Id.* at 143.

[13] Kuntzman explained that B.E. would need a parent who "provide[d] her with very close supervision," someone who was "constantly reinforcing and explaining . . . safety boundaries," "going over these basics with her every day, several times a day for her to understand it." *Id.* Kuntzman noted that an effective parent of B.E. would have to model behaviors for her "and be very interactive with her because she is more of a concrete learner[.]" *Id.* Kuntzman testified that B.E. would need "[v]ery long-term therapy" and that learning coping skills and safe boundaries was "going to take years, probably the rest of her life[.]" *Id.* at 145. Kuntzman opined that, "for quite a while," B.E. would need the therapeutic interventions she was currently receiving. *Id.* Kuntzman testified that if B.E. had a parent who did not engage in those interventions and did not actively parent her, "[i]t would be disastrous" and that, based on B.E.'s ACE score and developmental issues, there was a real possibility of suicide. *Id.*

[14] As for E.E., she also underwent a neuropsychological evaluation with Dr. Gelder. The evaluation was conducted in March 2019, at which point E.E. was five years and five months old. Dr. Gelder identified "clinical levels of inattention, anxiety, depression, and problematic adaptive functioning," with E.E.'s social/emotional functioning at the level of a child two years and nine months old. Ex. Vol. 5 at 15. E.E.'s overall neuropsychological profile was consistent with several diagnoses, including "Adjustment Disorder with mixed anxiety and depressed mood," "Probable Other Specified Trauma and Stressor

Related Disorder," "Attention or concentration deficit," and "Developmental disorder of speech and language, unspecified." *Id.* at 16. Dr. Gelder determined that E.E. "should be considered for a medication evaluation given the inadequate control of her symptoms." *Id.* Dr. Gelder opined that E.E.'s anxiety was of "particular concern" and "likely related to her history of early trauma." *Id.* Dr. Gelder also opined that E.E.'s caregivers "should be made aware of her diagnoses" and that "adjustments in her daily routine and performance should be considered[,] and planned accommodations should be implemented." *Id.* Dr. Gelder also noted that caregivers would need to be mindful that E.E.'s "social adaptive functioning is lower than her calendar age, and is actually consistent with some of her behavioral difficulties[.]" *Id.*

[15] Dr. Gelder explained that E.E. "needs to be involved in acquiring and developing more functional daily living skills" and that, given her age, doing so was imperative if [E.E.] is going to be able to function as independently as possible as an adult." *Id.* Dr. Gelder opined that E.E. needed to continue in therapy and that E.E.'s therapist should facilitate a treatment approach "with the family," *id.* at 17, with the overall treatment approach involving "considerable in-home services for an extended period of time," *id.* at 19. According to Dr. Gelder, an effective parent of E.E. would need to have "an awareness of appropriate child development" and "be creative, flexible" in working with E.E. and addressing her special needs with "appropriate problem-solving strategies." *Id.* Dr. Gelder characterized E.E. as a "high-risk, special needs child" who "will require even more time, energy, awareness, advocacy,

creativity and flexibility from her caregivers." *Id.* Dr. Gelder stated that E.E.'s parent would "need to attend parenting classes for special needs children and demonstrate . . . an adequate understanding of the needs" of E.E. *Id.*

[16] E.E.'s therapist, Phaecia Ward ("Ward"), testified that E.E. had an ACE score of an eight or higher, which placed E.E. at a high risk of having adverse adult outcomes. Ward explained that, although E.E. had progressed in treatment regarding sexual abuse trauma, E.E. "may require significant treatment . . . for a good length of time," including "mental health and behavioral health therapy[.]" Tr. Vol. 2 at 172. When asked whether E.E. might need services into adulthood, Ward responded, "[d]efinitely into adulthood." *Id.*

[17] Throughout the hearing, there was testimony that Father participated in services, but did not fully engage. Jennifer Ballinger ("Ballinger"), one of Father's therapists, explained that although Father was always "there and present," he "often did not want to do what [they] talked about" and "would resist . . . suggestions and question why [the suggestions] were necessary or whether they were even necessary." *Id.* at 86-87. As an example, Ballinger explained that Father liked to be physically affectionate. It was explained to Father that the way he positioned B.E. and E.E. on his lap posed a potential to "be triggering or activating" in light of B.E.'s and E.E.'s history of sexual abuse. *Id.* at 87. When Father was coached to modify his behavior, Father felt that his physical affection "didn't bother the girls," so he questioned why he should change his parenting approach. *Id.* Ballinger testified that Father "was willing to do a few things to please DCS, but he was not willing to make wholesale

changes . . . he either could not or would not make those wholesale changes." *Id.* at 92. Ballinger testified that Father repeatedly stated that his approach to parenting was to be "a referee rather than a hands-on parent[.]" *Id.* at 90. Ballinger opined that Father "would not . . . follow through with the services" that B.E. and E.E need. *Id.* at 91. Ballinger explained that, although Father "made a few changes," including addressing the lap-sitting issue, he "does not understand . . . or really strongly disagrees with DCS recommendations as to what he needs to do to be an adequate parent to his daughters." *Id.* at 91.

[18] Beth Webber, the Children's guardian ad litem ("GAL Webber"), testified that the service providers tried several different approaches to help Father learn to effectively parent B.E. and E.E. As to physical affection, GAL Webber noted that service providers "were trying to explain and then model" affectionate behaviors that would not be triggering, but Father "thought it was all bunk" and he still "doesn't see the big picture" of the DCS interventions. *Id.* at 226. GAL Webber characterized Father as a "reluctant participant," in that "he goes, he participates . . . but he doesn't gain any kind of benefit[.]" *Id.* at 211. GAL Webber explained that, although Father demonstrated behaviors that would be positive with a typical child, B.E. and E.E. "need so much more care than a typical child, so much more intervention, understanding, and treatment that [Father] just doesn't have the ability to provide." *Id.* at 214. According to GAL Webber, the lap-related issue concerning physical affection was "demonstrative of [Father's] lack of understanding, the lack of parenting, the lack of wanting to get to know his own kids and . . . their individual needs" so

that Father "could start addressing those; because he thought he knew and understood everything, and his way was an okay way to parent." *Id.* at 229.

[19] There was testimony that Father was argumentative at times with service providers, becoming "verbally aggressive" with Ward "to a level that would often make [B.E. and E.E.] cry during visits." *Id.* at 182. Father's visits with B.E. and E.E. were eventually terminated because Father became "aggressive and irate" to the point that Ward was concerned that Father was going to "become physically aggressive" as he stood "probably about two feet from [Ward's] face" and was "yelling in [her] face, in front of the children." *Id.* Ward testified that there was ultimately no progress in family therapy. Ward further testified that it became more beneficial to B.E. and E.E. to cease visits because "the nature of [Father's] aggressiveness, the intensity of his aggressiveness at that time . . . just was not appropriate behavior." *Id.* at 183.

[20] In late 2019, Father was referred to anger-management services. He began those services, but the services were ultimately suspended due to a pandemic. Father last visited with B.E. and E.E. in October 2019. After that point, Father did not ask his family case manager to resume visitation with B.E. and E.E.

[21] As to T.E., she had "no relationship whatsoever" with Father, and visitation was never in place between them. *Id.* at 216. GAL Webber testified that Father may have had incidental contact with T.E. early in the proceedings, perhaps "when he'd drop groceries off" to Mother. *Id.* At the fact-finding hearing, Father's testimony focused on B.E. and E.E., who were his biological children.

Father testified that he "would accept the responsibility to raise [T.E.] under kinship because she is [a] blood sister" to B.E. and E.E. *Id.* at 235. According to Father, that kinship relationship was "the only reason that [he hadn't] signed off on [T.E.]," who was his legal child but not his biological child. *Id.* at 235.

[22] Following the hearing, the court entered an order terminating Father's parental rights. The court determined that (1) the Children had been removed for the required period; (2) there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of the Children, in that "[a]fter nearly four . . . years of services, Father has not been able to demonstrate he has the ability or even the willingness to make changes in his parenting to address his children's needs"; (3) termination is in the Children's best interests; and (4) adoption is a satisfactory plan. App. Vol. 2 at 108-09.

[23] Father now appeals.

Discussion and Decision

[24] When entering a judgment in a termination matter, the trial court must enter findings of fact. Ind. Code § 31-35-2-8(c). Pursuant to Trial Rule 52(A), we "shall not set aside the findings or judgment unless clearly erroneous" and shall give "due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses." A finding is clearly erroneous if the record contains no evidence to support the finding. *Town of Brownsburg v. Fight Against Brownsburg Annexation*, 124 N.E.3d 597, 601 (Ind. 2019). Moreover, a judgment is clearly

erroneous "if the court applied the 'wrong legal standard to properly found facts.'" *Id.* (quoting *Town of Fortville v. Certain Fortville Annexation Territory Landowners*, 51 N.E.3d 1195, 1198 (Ind. 2016)). In conducting our review, we do not reweigh the evidence or reassess the credibility of the witnesses, and we consider only the evidence and the reasonable inferences that support the judgment. *In re N.G.*, 51 N.E.3d 1167, 1170 (Ind. 2016). If the evidence supports the findings and the findings support the judgment, we affirm. *See id.*

[25] In a termination proceeding, "[a] finding . . . must be based upon clear and convincing evidence." I.C. § 31-37-14-2. To terminate, the court must find

> (A) that one (1) of the following is true:
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> > (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
> >
> > (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
> >
> > (iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
>
> (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.

I.C. § 31-35-2-4(b)(2).

[26] At the outset, we note that although Father uses a collective definition for the Children in his brief—a definition that includes T.E.—Father does not delineate argument regarding T.E. On appeal, DCS has asserted that Father "waived any argument to challenge the court's order regarding child T.E." Br. of Appellee at 30. Moreover, we observe that Father declined to refute DCS's assertion by declining to file a Reply Brief. Based on Father's positions below and now on appeal, it appears that Father is only conditionally seeking to retain parental rights of T.E., *i.e.*, Father is willing to parent T.E. so long as he is also able to parent B.E. and E.E. Indeed, Father testified that the blood relationship between the Children was "the only reason" he had not "signed off on [T.E.]"

and relinquished his legal parental rights. Tr. Vol. 2 at 235. In light of Father's conditional position regarding T.E., this Court needs to address the sufficiency of the evidence as to T.E. only if there is insufficient evidence as to B.E. and E.E. We therefore turn to the sufficiency of the evidence as to B.E. and E.E.

Sufficiency of the Evidence

[27] In challenging the sufficiency of the evidence, Father concedes that B.E. and E.E. were removed for the required statutory period. Moreover, although Father asserts that adoption is not a satisfactory plan, he acknowledges that caselaw "is not particularly in his favor[.]" Br. of Appellant at 25. Father is correct as to the caselaw, in that a plan "need not be detailed, so long as it offers a general sense of the direction in which [a] child will be going after the parent-child relationship is terminated." *In re D.D.*, 804 N.E.2d 258, 268 (Ind. Ct. App. 2004), *trans. denied.* Furthermore, it is well-settled that adoption is a satisfactory plan. *E.g.*, *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009). Thus, we discern no evidentiary defect with respect to the foregoing matters.

[28] We focus, then, on whether there is sufficient evidence that (1) there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of B.E. and E.E.[2] and (2) termination is in the best interests of B.E. and E.E. *See* I.C. § 31-35-2-4(b)(2)(B), (b)(2)(C).

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[2] Father also focuses on a different statutory subsection regarding whether "[t]here is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the

Threat to Well-Being

[29] Here, the court found a reasonable probability that continuing the parent-child relationships posed a threat to the well-being of E.E. and B.E. As to a child's well-being, the evidence "need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development are threatened by the respondent parent's custody." *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1230 (Ind. 2013) (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005)).

[30] In this case, there is evidence that B.E. and E.E. need ongoing services, potentially for the rest of their lives. There is also evidence that because of childhood trauma, B.E. and E.E. are at a high risk for having adverse outcomes as adults—including a real possibility of suicide. At the fact-finding hearing, there was evidence that Father was a reluctant participant in services, deriving minimal benefit. The trial court found that, although Father "participated in most of the services DCS has requested," Father "refused or is unable to benefit from those services." App. Vol. 2 at 109. Along these lines, the court noted that, despite several years of services, Father "has not been able to demonstrate he has the ability or even the willingness to make changes in his parenting to address [B.E.'s and E.E.'s] needs." *Id.* at 108. The court found that Father's

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parents will not be remedied." I.C. § 31-35-2-4(b)(2)(B)(i). However, because that portion of the statute is written in the disjunctive, we need not address Father's arguments under that different statutory subsection.

parenting style is "incompatible with the needs of [B.E. and E.E.] given their history of trauma, current stage of development, and special needs." *Id.* at 109.

[31] The foregoing findings have ample evidentiary support, and those findings support a determination that the continuation of the parent-child relationships poses a threat to the well-being of B.E. and E.E. Father's arguments to the contrary amount to requests to reweigh the evidence, which we must decline.

Best Interests

[32] "Deciding whether termination is in children's best interests is '[p]erhaps the most difficult determination' the trial court must make." *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (alteration in original) (quoting *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014)), *cert. denied*. The trial court "must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *Id.* "Central among these interests is [the] need for permanency," because "'children cannot wait indefinitely for their parents to work toward preservation or reunification.'" *Id.* (quoting *In re E.M.*, 4 N.E.3d at 648). Ultimately, termination may be proper if a parent is unwilling or unable to meet his parental responsibilities. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010).

[33] As of the May 2020 hearing, B.E. and E.E. had been out of Father's care since September 2016—a majority of E.E.'s life and a substantial portion of B.E.'s life. Although Father had participated in services, he did not embrace the need for those services. Moreover, there was evidence that Father was unwilling or unable to adopt the parenting skills B.E. and E.E. require due to their special

needs. There was also evidence indicating that, although B.E. and E.E. need substantial ongoing therapy, Father would likely not keep them in therapy.

[34] Father argues that he should be given more time to demonstrate his ability to effectively parent. He points out that, due to a pandemic, he was unable to complete anger-management services "and ultimately prove to DCS and the trial court his fitness." Br. of Appellant at 24. Yet, regardless of the suspension of certain services, Father had several years—beginning in late 2016—to work toward reunification. Ultimately, although Father may be able to effectively parent a child without special needs, the evidence indicates that Father was unwilling or unable to become the parent that B.E. and E.E. need him to be.

[35] Based upon the evidence, including GAL Webber's testimony recommending termination, we cannot say that the trial court clearly erred in deciding that terminating Father's parental rights is in B.E.'s and E.E.'s best interests.

[36] All in all, the evidence supports the pertinent findings, and those findings support the decision to terminate Father's parental rights as to B.E. and E.E. Thus, there is sufficient evidence supporting termination with respect to B.E. and E.E. Moreover, because Father expressed only a conditional interest in a parent-child relationship with T.E., we discern no error in the order as to T.E.

[37] Affirmed.

Robb, J., and Tavitas, J., concur.