

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 S.F. (Minor Child);

R.F. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

September 30, 2022

Court of Appeals Case No.
22A-JT-977

Appeal from the Gibson Circuit
Court

The Honorable Jeffrey F. Meade,
Judge

Trial Court Cause No.
26C01-2111-JT-241

Tavitas, Judge.

Case Summary

- [1] R.F. (“Father”) appeals the termination of his parental rights to S.F. (“Child”). Father claims that the trial court clearly erred in terminating his parental rights. Finding that the trial court’s determinations are not clearly erroneous, we affirm.

Issue

- [2] Father raises one issue, which we restate as whether the trial court clearly erred in terminating his parental rights.

Facts

- [3] Child was born in October 2018 to Father and T.B. (“Mother”).¹ The Child was removed from Father’s care on October 29, 2020. At that time, Mother was hospitalized after she allegedly overdosed on illegal substances. Father was caring for the Child while Father appeared to be under the influence of illegal substances, and Father was behaving erratically. Ex. Vol. III p. 229. Father refused to submit to a drug screen. The Child was removed from Father’s care and placed with a relative.
- [4] On October 30, 2020, the Gibson County Office of the Department of Child Services (“DCS”) filed a petition alleging that the Child was a child in need of

¹ The trial court terminated Mother’s parental rights after she did not appear at the fact-finding hearing. Mother does not participate in this appeal. Mother also had an older child, who was the subject of a separate termination of parental rights proceeding.

services (“CHINS”). Father and Mother refused to participate in services offered by DCS, and Father was argumentative with DCS employees and service providers. In January 2021, the trial court ordered Father to participate in a hair follicle screen, which tested positive for methamphetamine and THC.

[5] On April 1, 2021, the trial court found that Child was a CHINS. The trial court then entered a dispositional decree and ordered Father to, in part: (1) avoid the consumption of illegal controlled substances; (2) obey the law; (3) complete a substance abuse assessment and follow all treatment recommendations; (4) submit to random drug screens; and (5) attend all scheduled visitations with the Child.

[6] Father, however, struggled to participate in services and was only minimally compliant with the dispositional order. During the proceedings, Father was repeatedly arrested and incarcerated; Father refused to submit to most random drug screens; Father’s visitation was sporadic; Father’s residence was subject to foreclosure; Father failed to participate in parent aid services; and Father lacked transportation. On April 1, 2021, Father tested positive for amphetamine, methamphetamine, and fentanyl. On April 23, 2021, Father tested positive for amphetamine, methamphetamine, and alcohol. Father did participate in drug rehabilitation in September 2021.

[7] In November 2021, DCS filed a petition to terminate Father’s and Mother’s parental rights to Child. Father was again incarcerated from the beginning of December 2021 until mid-February 2022. On December 15, 2021, the trial court ordered that services to Father be suspended. The fact-finding hearing

was held on March 18, 2022. Father testified that he had been “sober for almost four months” and that he had “been taking all the necessary steps to get [his] life in order.” Tr. Vol. II p. 102.

[8] After the fact-finding hearing, the trial court granted DCS’s petition to terminate Father’s parental rights. The trial court found:

2. On or about March 1st, 2021, Father was arrested and charged with Unlawful possession of [a] syringe and possession of a controlled substance, cause number 87D02-2103-F6-000080.

3. On or about May 17th 2021, Father was arrested and charged with 35-43-2-1.5/F6: Residential Entry break and enter dwelling and 35-43-1-2(a)/MB: Criminal Mischief, cause number 82C01-2105-F6-002578.

4. On or about August 5th 2021, Father was arrested and charged with 35-43-4-2(a)/MA: Theft, and 35-48-4-11(a)(1)/MB: Possession of Marijuana, cause number 82D05-2110-CM-005611.

5. On or about March 8th 2021[,] a Mortgage Foreclosure action was filed against Father by the Evansville Teachers Federal Credit Union. On or about April 28th, 2021[,] an order for default judgment was entered against Father for around \$76,313.26.

6. As a result of the filing of the TPR petition, the CHINS Court stopped all services for Father on or about December 15, 2021.

7. Father has not visited with the child since November of 2021.

8. Father[']s substance abuse issues were consistent problems throughout the duration of the CHINS matter. FCM attempted to address these issues with Father. However, Father was never fully compliant with recommended services to address the substance abuse concerns and made no significant improvement towards remedying substances [sic] abuse problems.

9. In May of 2021, Father only visited with the child three times. In June of 2021, Father did not visit with the child. In July of 2021, Father did not visit with the child. In August of 2021, Father visited with the child two times. In September of 2021, Father visited with the child six times and cancelled one visit. In October of 2021, Father visited with the child five times and cancelled four visits. In November of 2021, Father visited with the child one time and cancelled seven visits. In December of 2021, Father did not visit with the child and cancelled three visits.

10. In January of 2021, Father attended 1 out of 4 parent aid sessions. In February of 2021, Father did not attend any of the sessions with the parent aid. In March of 2021, Parent Aide was unable to get into contact with Father and thus no sessions were scheduled. In April of 2021, Parent Aide attempted to contact Father each week and received little to no response and thus no sessions were scheduled. In May of 2021, Parent Aide attempted to contact Father each week and received little to no response and thus no sessions were scheduled. In June of 2021, Father was incarcerated so parent aid sessions could not be had. On June 22, 2021[,] Parent Aid services were put on hold for the father.

11. Throughout the case, [Father] actively refused to drug screen while under a court dispositional order to do so.

12. Father failed to obtain stable employment or housing. Father did not maintain a job throughout the life of the CHINS matter.

13. Overall, Father demonstrated inconsistent participation in the child[’s] case plan. Father did not complete any recommended services.

Appellant’s App. Vol. II pp. 128-29. Father now appeals.

Discussion and Decision

[9] Father challenges the trial court’s termination of his parental rights to Child. The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; *see also Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[10] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.² Here, the trial court did enter findings of fact and conclusions thereon in granting DCS’s petition to terminate Father’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[11] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in part:

² Indiana Code Sections 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

A. Challenged Finding

[12] Father first challenges one of the trial court’s findings. We note that Father does not challenge the remainder of the trial court’s findings, and thus, has waived any argument concerning the remaining findings. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019) (explaining that this Court will accept unchallenged trial court findings as true).

[13] Father challenges the following finding:

Father[’s] substance abuse issues were consistent problems throughout the duration of the CHINS matter. FCM attempted to address these issues with Father. However, Father was never fully compliant with recommended services to address the substance abuse concerns and made no significant improvement towards remedying substances [sic] abuse problems.

Appellant’s App. Vol. II p. 128 (Finding No. 8). Father contends that, at the time of the fact-finding hearing, he had been sober for four months and that he participated in drug rehabilitation, which ended in September 2021. Thus, Father argues that the finding is clearly erroneous because he made significant improvements in staying sober.

[14] DCS presented evidence that Father generally refused to participate in random drug screening and was uncooperative. Father was “hostile” with DCS employees when his substance abuse issues were raised with him. Tr. Vol. II p. 77. Although Father apparently participated in some drug rehabilitation, he refused to sign releases for DCS to obtain information about the rehabilitation. Although Father claimed to have been sober for four months, Father was incarcerated for two months of that time. Under these circumstances, we cannot say the trial court’s finding is clearly erroneous.

B. Reasonable Probability of Remedy of Conditions

[15] Father also challenges the trial court’s conclusion that 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.” I.C. § 31-35-2-4(b)(2). “In determining whether ‘the conditions that resulted in the

[Children’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “First, we identify the conditions that led to removal; and second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

[16] Father argues that, at the time of the fact-finding hearing, he had been sober for four months and, because DCS terminated services in December 2021, DCS had no evidence that Father was not maintaining his sobriety. On December 15, 2021, the trial court ordered that all services to Father be suspended. At that time, Father’s participation in services had been minimal, and Father was incarcerated. Moreover, of the four months of sobriety that Father claims, he was incarcerated for two of those months.

[17] Child was removed from Father’s care due to Father’s substance abuse while he was caring for her and his erratic behavior. DCS presented evidence that, following the Child’s removal, Father made minimal progress during the

CHINS proceedings. He was arrested and incarcerated multiple times, refused multiple drug screens, tested positive for methamphetamines, and generally was inconsistently visiting with the Child. While we applaud Father for his recent progress in maintaining sobriety, the trial court was well within its discretion to weigh Father's past history more heavily than his recent efforts at sobriety. We cannot say the trial court's finding is clearly erroneous.

C. Continuation of Relationship Poses a Threat

[18] Father also argues that DCS failed to prove there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Child.³ “[A] trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that [his or] her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *K.E. v. Indiana Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). Clear and convincing evidence need not reveal that “the continued custody of the parents is *wholly inadequate* for the child’s very survival.” *Bester*, 839 N.E.2d at 148 (emphasis added). “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.” *Id.* “[T]he trial court must consider a parent’s habitual pattern of conduct to determine whether there is a

³ Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, the DCS was required to demonstrate by clear and convincing evidence a reasonable probability that *either*: (1) the conditions that resulted in the Child’s removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child. *See, e.g., Bester*, 839 N.E.2d at 148 n.5.

substantial probability of future neglect or deprivation.” *Id.* at 152. “At the same time, however, a trial court should judge a parent’s fitness to care for his child as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.*

[19] Although Father was offered substantial assistance, Father was uncooperative with DCS and its service providers. The trial court was within its discretion to find that Father’s recent progress, although commendable, does not outweigh his habitual patterns of conduct. Father’s long-term substance abuse and repeated criminal activity threaten Child’s well-being. The trial court’s finding that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Child is not clearly erroneous.

Conclusion

[20] The termination of Father’s parental rights was not clearly erroneous. Accordingly, we affirm.

[21] Affirmed.

Brown, J., and Altice, J., concur.