MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:
A.K. (Minor Child),

and

M.B. (Father)

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Plaintiff.

August 6, 2021

Court of Appeals Case No. 21A-JT-566

Appeal from the Tippecanoe Superior Court

The Honorable Tricia L. Thompson, Magistrate

Trial Court Cause No. 79D03-2006-JT-24

Bailey, Judge.

Case Summary

[1] M.B. ("Father") appeals the termination of his parental rights to A.K. ("Child") upon the petition of the Tippecanoe Department of Child Services ("the DCS"). He presents the issue of whether the termination decision is clearly erroneous. We affirm.

Facts and Procedural History

[2] Child was born on May 9, 2019. At that time, both Child and Mother tested positive for methamphetamine. Mother reported that she had been living in a homeless shelter and the DCS was unable to locate Father. On May 11, 2019, Child was placed in the home of her half-sibling's paternal grandmother ("Grandmother"). On October 2, 2019, Child was found to be a Child in Need of Services ("CHINS").

[3] Father's paternity was later confirmed through DNA testing, but Father admitted that he lacked suitable housing for Child and needed a couple of months to obtain appropriate supplies. On October 6, 2019, the juvenile court entered a dispositional order.[1] Child continued to remain in the care of Grandmother. Father was ordered to, among other things, maintain contact with the DCS, obtain suitable housing for Child, secure a stable source of

[1] Mother was ordered to participate in reunification services but she did not visit with Child and was otherwise non-compliant. Mother does not appeal the termination of her parental rights.

income, and cooperate with service providers. The specific services offered to Father included a mental health assessment, supervised visits with Child, and home-based case management. Father completed a mental health assessment, which resulted in no additional referral. However, he failed to maintain contact with the DCS and his parenting time participation was sporadic. Five agencies discharged Father from child visitation services.

[4] On June 10, 2020, the DCS petitioned to terminate Father's parental rights to Child. On November 9, 2020, a hearing was conducted, at which service providers, the Court Appointed Special Advocate ("CASA"), and Father testified. According to Father's testimony, he was employed through a temporary employment agency and living with a cousin. He opined that his current residence was not suitable for Child, but he considered Child's continued placement with Grandmother to be a suitable alternative to termination of his parental rights. On February 8, 2021, the juvenile court entered its findings, conclusions, and order terminating Father's parental rights. Father now appeals.

Discussion and Decision

[5] The trial court found that Father lacked employment stability or housing suitable for Child, that his participation in services had been sporadic, he had been discharged for non-compliance by multiple service providers, and Child did not appear to be bonded to Father. Father does not specifically challenge any of these factual findings as lacking evidentiary support; rather, he focuses

upon whether the unchallenged findings support the juvenile court's conclusions as to remediation of conditions and best interests of Child. He argues that the DCS failed to establish, by clear and convincing evidence, the requisite statutory elements to support the termination decision, and thus the order of termination is clearly erroneous.

[6] The Fourteenth Amendment to the United States Constitution protects a parent's right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although "[a] parent's interest in the care, custody, and control of his or her children is 'perhaps the oldest of the fundamental liberty interests[,]'" parental interests are not absolute and "must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights." *Bester v. Lake Cty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). "Indiana law has accordingly established a 'high bar' for the termination of parental rights." *In re Bi.B.*, 69 N.E.3d 464, 467 (Ind. 2017). Termination is considered a last resort, "available only when all other reasonable efforts have failed." *Matter of D.G.*, 702 N.E.2d 777, 781 (Ind. Ct. App. 1998).

[7] A petition to terminate those rights must allege, in pertinent part:

> (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....

(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. ...

(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). To grant a petition, the court must enter findings of fact to support termination. *See* I.C. § 31-35-2-8(c); Ind. Trial Rule 52(A).

[8] When a court enters findings and conclusions, we look to whether the evidence supports the findings and the findings support the judgment—reversing upon clear error. T.R. 52(A); *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). In this context, our legislature has directed that "[a] finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence." I.C. § 31-37-14-2. This is a "'heightened burden of proof' reflecting termination's 'serious social consequences.'" *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014) (quoting *In re G.Y.*, 904 N.E.2d 1257, 1260-61 & n.1 (Ind. 2009)). In light of this heightened burden of proof, we review "whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment." *In re R.S.*, 56 N.E.3d at 628 (quoting *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010)). In conducting our review, we "consider only the evidence that supports the judgment and the reasonable

inferences to be drawn from the evidence." *In re E.M.*, 4 N.E.3d at 642 (quoting *Egly v. Blackford Cty. Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). To the extent the appeal involves a question of law—such as the interpretation of a statute—we will review the question of law de novo. *In re Bi.B.*, 69 N.E.3d at 466.

Remediation of Conditions

[9] Father challenges the court's conclusion that there is a reasonable probability that he would not remedy the reasons for Child's removal. Father observes: "the reasons for removal were all related to the mother. DNA did not establish paternity until two months later." Appellant's Brief at 14. Child was initially removed from Mother's custody because of Mother's drug use and the lack of stable housing for Child. At the time of removal, Father could not provide the needed housing.

[10] The language of Indiana Code Section 31-35-2-4(b)(2)(B)(i) "clarifies that it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside of the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005). In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d at 643. We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those

conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *Id.*

[11] Moreover, this court has held that a pattern of unwillingness to deal with the parenting problems and to cooperate with counselors and those providing services, in conjunction with unchanged and unacceptable home conditions, supports a finding that there is no reasonable probability the unacceptable conditions in the home will be remedied. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990). DCS need not rule out all possibilities of change; rather, it must establish 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), *trans. denied*.

[12] Here, family case manager Ashley Rayburn testified that the DCS had made five referrals for supervised parenting time. Four of the five providers had discharged Father for non-compliance or lack of contact. The first referral, The Bowen Center, discharged Father for "lack of contact" and "not maintaining appointments." (Tr. Vol. II, pg. 35.) The next referral was closed unsuccessfully for inability to schedule a visit. Visitation facilitator Isabella

Smith testified that, over a one-month period of time, she had sent a series of e-mails and texts to which she had received no response; she also had placed several unanswered calls. Father made contact, verifying that the telephone number was correct, only after the referral was closed. Another referral was made to The Bowen Center, but they were unable to provide services. The fourth referral was made after Father reported that he was relocating; however, the Lafayette location of Lifeline could not reach Father.

[13] The fifth visitation referral was to Counseling Partners, where visitation facilitator Brandy Thatcher ("Thatcher") supervised some visits between Father and Child. Thatcher found Father to be attentive and caring toward Child, but she did not observe parent-child bonding. Father attended two of seven scheduled visits and was unsuccessfully discharged for non-compliance.

[14] Father participated in some home-based counseling services; however, he did not maintain sufficient contact with the DCS to progress to in-home trial visits. Father testified that, apart from the impact of Covid, he had generally been employed. However, he had never produced verification of employment or advised the DCS that he had housing suitable for an in-home trial visit with Child or Child's placement with him. Father reported having lived with a couple who did not want a child in the home; then he had been without a permanent residence for a few weeks (sleeping on a friend's sofa or in a hotel); then he had moved in with a cousin. The latest residence had two bedrooms, one for each of the male residents, but did not have a separate bedroom for Child. Father testified that his residence was not suitable for Child.

[15] Father insists that "a missed visit or communication problems that keep visits from being scheduled isn't clear and convincing evidence that [he] is unable to parent [Child]. Appellant's Brief at 17. But each missed visit represents a missed opportunity to form or strengthen a parent-child bond. This failure to exercise a parental right to visit one's child demonstrates a "lack of commitment to complete the actions necessary to preserve [the] parent-child relationship[.]" *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). Here, the evidence is sufficient to support the juvenile court's conclusion that there is a reasonable probability that the conditions resulting in Child's removal will not be remedied.

[16] Father also claims there was no evidence presented that he posed a threat to Child. But in order to prove that termination is appropriate, the DCS need only prove one of the two grounds alleged in the petition for involuntary termination under section 31-35-2-4(b)(2)(B). *Bester*, 839 N.E.2d at 148 n. 5 ("Having found a reasonable probability that the conditions precipitating the [children's] removal would not be remedied, the trial court was not required to find also that the continuation of the parent-child relationship posed a threat to the [children], since the statute only requires finding one or the other.") (alteration in original) (quoting *In re W.B.*, 772 N.E.2d 522, 531 n. 2 (Ind.Ct.App.2002)); I.C. § 31-35-2-4(b)(2).

Best Interests

[17] Father claims to have made sufficient efforts to avoid the last resort of termination of the parent-child relationship. He finds the expectations of the

DCS with respect to housing and employment to be unrealistic and argues that a child's need for permanency should not be a "main focus" of "termination litigation." Appellant's Brief at 19. According to Father, Child's best interests would be served by continuation of a relationship with her biological parent and her continued custodial placement with Grandmother.

[18] In determining what is in a child's best interests, a juvenile court is required to look beyond the factors identified by the DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id*. The juvenile court need not wait until a child is irreversibly harmed before terminating parental rights. *McBride v. Monroe Cty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). As such, a child should not be compelled to suffer emotional injury, psychological adjustments, and instability to preserve parental rights. *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied.*

[19] The juvenile court found that Father had been discharged from multiple providers offering supervised parenting time with Child. The lack of consistency had interfered with bonding, and service providers observed that Child cried upon seeing Father and exhibited no discernable bond with him, despite his caring demeanor. Although Father's efforts to maintain employment after a Covid-related interruption in work are commendable, and

he has secured temporary work with full-time hours, he admitted that he had no suitable housing for Child. Child is reportedly bonded with Grandmother, where she has been placed since birth, together with her older half-sibling. Child has a compromised immune system, and Grandmother has been able to consistently obtain the medical care needed for Child. Having investigated the surrounding circumstances, the CASA recommended termination of Father's parental rights. The finding that termination of parental rights is in Child's best interests is supported by clear and convincing evidence.

Conclusion

[20] The juvenile court's findings support its judgment terminating Father's parental rights. Thus, the termination order is not clearly erroneous.

[21] Affirmed.

Crone, J., and Pyle, J., concur.