

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of J.B.
(Minor Child) and W.B. (Father)

W.B. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

February 14, 2023

Court of Appeals Case No.
22A-JT-2232

Appeal from the
Posey Superior Court

The Honorable
Travis L. Clowers, Judge

Trial Court Cause No.
65D01-2204-JT-46

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] W.B. (“Father”) appeals the termination of his parental rights to his daughter, J.B. (“Child”). We affirm.

Facts and Procedural History

- [2] Father is the biological father of Child, born in 2018. Je.B. (“Mother”) is Child’s biological mother. Mother voluntarily relinquished her parental rights, so she does not participate in this appeal.
- [3] In May 2021, Father was arrested and charged with Level 4 felony dealing in methamphetamine and Level 6 felony maintaining a common nuisance. He later pled guilty and was sentenced to eight years in the Indiana Department of Correction (DOC). After Father’s arrest, the Department of Child Services (DCS) in Posey County took custody of Child because Mother could not be located. Family Case Manager (FCM) John Laury investigated the home and saw guns and drugs within easy reach of three-year-old Child. Child was placed with her maternal grandparents in Illinois, where she has since remained.
- [4] That month, DCS filed a petition alleging Child was in need of services (CHINS). Father stipulated to the evidence in the petition, and the court adjudicated Child a CHINS. During the CHINS case, Father participated in

virtual visits with Child but could not participate in other DCS services due to his incarceration. In April 2022, DCS petitioned to terminate Parents' rights.

[5] A factfinding hearing was held in September 2022. Jillian Kratochvil, Child's Guardian Ad Litem (GAL), testified that Father has a "long" criminal history, which dates back to 2001 and mostly involves domestic abuse and substance abuse. Tr. Vol. II p. 23. She further testified that she believes termination is in Child's best interests given Father's incarceration and so that she can achieve permanency. FCM Laury also testified termination is in Child's best interests, noting that her grandmother also has custody of Child's half-sibling and that Child is bonded to both grandparents and her sibling.

[6] Father testified that he had no contact with Child until June 2020, when Child was two years old and Mother asked him to "come get" Child because Mother could no longer care for her. *Id.* at 35. He stated Child lived with him until he was arrested less than a year later. Father also stated his current release date is May 2027, but it could be earlier if he completes his substance-abuse classes. He acknowledged that he had previously been incarcerated and taken substance-abuse classes but claimed that these experiences were not able to "turn [him] around." *Id.* at 32. But he believed "with this prison sentence and these classes, hopefully . . . [he] can turn it around and get some good out of it." *Id.*

[7] Following the hearing, the trial court issued an order terminating Father's parental rights.

[8] Father now appeals.

Discussion and Decision

[9] Father argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[10] 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 at 1231. If the court finds the allegations in a petition are true, the court “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

I. Conditions Remedied

[11] Father first challenges the trial court’s conclusion that there is a reasonable probability the conditions resulting in Child’s removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child’s removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must determine what conditions led to the child’s placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

[12] Child was removed due to Father’s arrest and safety concerns in the home, including drugs and guns within easy reach of Child. Father has not shown an ability to remedy these conditions. Father has been incarcerated throughout the CHINS case and likely will not be released until 2027, when Child is nine years

old. He has a twenty-year history of incarceration, largely relating to drug use. And although he is taking classes while in the DOC to address his substance-abuse, he admitted he took similar classes when previously incarcerated and then went back to using drugs upon his release. Given this history and his current sentence, it is reasonable for the trial court to determine he will not remedy these conditions. *See Castro v. State Office of Family & Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (finding a reasonable probability the conditions causing the child’s removal would not be remedied where the father would be incarcerated for the next six years and thus unable to provide a stable environment), *trans. denied*.

[13] The trial court did not err when it concluded there is a reasonable probability the conditions leading to Child’s removal will not be remedied.¹

II. Best Interests

[14] Father also challenges the trial court’s conclusion that termination is in Child’s best interests. In determining the best interests of a child, the trial court must look at the totality of the evidence. *In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those

¹ Father also challenges the trial court’s conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child’s well-being. But because we affirm the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find that only one of the three requirements of subsection (B) has been established by clear and convincing evidence), *trans. denied*.

of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.* We have held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied.*

[15] Here, both FCM Laury and GAL Kratochvil recommended termination, believing it to be in Child’s best interests. And as noted above, Father has not shown an ability to provide a safe and stable environment for Child. While this evidence alone is sufficient, permanency is also a central consideration. Father had never met Child until he abruptly began caring for her full-time when she was two. Child lived with Father for less than a year before he was arrested and she was removed. Since then, she has lived with her maternal grandparents, to whom she is bonded and who wish to adopt her.

[16] For all these reasons, we conclude that the totality of the evidence supports the trial court’s determination that termination of Father’s parental rights is in Child’s best interests.

[17] **Affirmed.**

Tavitas, J., and Foley, J., concur.