

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary
Termination of the Parent-Child
Relationship of E.D. and A.C.
(Minor Children) and
J.C. (Mother) and R.D. (Father),
Appellants-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

September 8, 2022

Court of Appeals Case No.
22A-JT-579

Appeal from the Vigo Circuit
Court

The Honorable Daniel W. Kelly,
Magistrate

Trial Court Cause Nos.
84C01-2104-JT-454
84C01-2107-JT-740

Crone, Judge.

Case Summary

- [1] J.C. (Mother) and R.D. (Father) appeal an order involuntarily terminating their parental rights to their children, E.D. and A.C.¹ Mother challenges the determination that termination was in the children's best interests. Father contends that the Indiana Department of Child Services (DCS) failed to present sufficient evidence to justify terminating his parental rights and that he was denied effective assistance of counsel. Finding no reversible error, we affirm.

Facts and Procedural History

- [2] Mother gave birth to E.D. in May 2016. Almost one year later, DCS initiated a child in need of services (CHINS) proceeding regarding E.D. due to Father's arrest for domestic battery and admitted current and past methamphetamine use by both Mother and Father. During the next two years, services were provided, relapses occurred, and E.D. was placed in foster care for ten months. Wardship terminated in May 2019.
- [3] In the fall of 2019, DCS filed a second CHINS petition, alleging Mother's admission to a hospital on a seventy-two-hour hold due to "paranoia and not being coherent, testing positive for methamphetamine, and not currently taking" her antipsychotic medication. Ex. Vol. 6 at 39. In October 2019, the

¹ Father was listed on E.D.'s birth certificate, and DNA test results established Father's paternity of A.C. Paternity is not disputed.

court adjudicated E.D. a CHINS based upon Mother's and Father's admissions to "mental health issues." *Id.* at 77-78. Reunification services were ordered for the parents, and E.D. was placed with the same foster family that cared for her during the prior CHINS case.

[4] Another daughter, A.C., was born to Mother in July 2020. When A.C. was just six days old, DCS filed a CHINS petition, alleging that Mother used methamphetamine, had untreated mental health concerns, and, along with Father, engaged in unsafe sleeping practices with A.C. Law enforcement helped remove A.C. Thereafter, A.C. was placed in foster care, and reunification services were ordered for Mother and Father.

[5] In February 2021, a concurrent adoption permanency plan was established for E.D. In April 2021, DCS filed a petition to terminate Mother's and Father's parental rights to E.D. In June 2021, a concurrent adoption permanency plan was established for A.C. The following month, DCS filed a petition to terminate Mother's and Father's parental rights to A.C. Factfinding hearings for both terminations occurred over two days, one in October 2021 and the other at the end of January 2022. Father failed to appear at the latter hearing. In February 2022, the trial court issued an order terminating Mother's and Father's parental rights to both children. Further details will be provided where relevant.

Discussion and Decision

Section 1 – Mother and Father have not demonstrated that the termination order was clearly erroneous.

[6] Where, as here, we address challenges to the termination of parental rights, we apply a highly deferential standard of review. *See In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). We neither reweigh evidence nor assess witness credibility. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. *Id.* Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* Unchallenged findings stand as proven. *In re Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020). In deference to the trial court’s unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Clear error is that which “leaves us with a definite and firm conviction that a mistake has been made.” *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied*. “[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal.” *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[7] “Parents have a fundamental right to raise their children – but this right is not absolute. When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *In re Matter of Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). A petition to terminate a parent-child relationship must allege, among other things:

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)(B) (emphasis added). DCS must prove the elements by “clear and convincing evidence.” *In re R.S.*, 56 N.E.3d 625, 629 (Ind. 2016). DCS need only prove one of the options listed under subparagraph 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] Mother contests the best interests determination. She highlights her attempts to overcome her methamphetamine addiction, stresses her bond with her daughters, and criticizes the plan for the siblings to be in separate homes. Father makes abbreviated challenges to the best interests determination as well as to the determination regarding remedying conditions that led to removal or placement outside the home or continuation of the relationship posing a threat.² He cites his attempts at treatment, desire to reengage with services, behavior when Mother triggers him, and good bond with his girls.

[9] A decision regarding whether termination is in children's best interests is perhaps the most difficult determination the trial court must make. To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children. Central among these interests is children's need for permanency. Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.

Ma.H., 134 N.E.3d at 49 (citations and internal quotations omitted).

[10] Here the trial court cited testimony from the DCS family case managers, the CASA, and the foster mother in support of its best interests determination. In addition, the court provided almost five pages of detailed findings within its

² DCS would have us waive Father's arguments regarding the remedying of conditions that led to removal or placement outside the home and the continuation of the relationship posing a threat. While Father's argument is not particularly lengthy or well-developed, we cannot say that he presented "no argument whatsoever" regarding these elements. Appellee's Br. at 35.

determination that there is a reasonable probability that the conditions which resulted in the removal of the children from their parents will not be remedied or the reasons for placement outside of the home of the parents will not be remedied or that the continuation of the parent-child relationship poses a threat to the well-being of the children. *See* Appellant Father's Appendix Vol. 2 at 31-35, 38-42. We condense the unchallenged findings below.

[11] In May 2017, Father was arrested for domestic battery in the presence of a child and possession of paraphernalia (syringes in the home). Mother admitted the domestic violence occurred, and both she and Father admitted years of addiction. Both parents had a history of drug use and domestic violence. Mother's history dated back to 2012, and Father's back to 2003. The resulting 2017 CHINS case began with placement of E.D. at home but soon switched to placement with foster parents due to Mother and Father staying in a condemned home, Father refusing to take prescribed mental health medications, parents being noncompliant with substance abuse services, and the child being unwashed, wearing dirty clothing, and having matted hair. Drug use continued by both parents despite intensive programming. Wardship in the 2017 CHINS case terminated in May 2019.

[12] Just three months later, Mother entered an emergency room, reported she had been poisoned, and complained of red bumps all over her skin. No bumps existed, and Mother admitted she was off her antipsychotic medications and using methamphetamine. She claimed people were trying to kill her and disclosed she had thoughts of killing her children and herself. Hence, the 2019

CHINS case began. At the time of assessment, both Mother and Father tested positive for methamphetamine. E.D. returned to the foster home that had cared for her previously.

[13] Thereafter, Mother became pregnant again and used methamphetamine daily. Shortly after Mother gave birth to A.C. in July 2020, DCS spoke with her about drug use and safe sleep. Mother resisted implementation of a safety plan yet days later called 911, claiming that A.C. had stopped breathing. When the ambulance arrived, Mother initially prevented EMTs from examining A.C., asserting that they were going to kill her child. A.C. was fine. Less than a week after A.C.'s birth, she was removed from the home.

[14] Services ensued, but constant arguing between Mother and Father made it extremely difficult for case managers to work with the feuding couple. Mother and Father have a chronically toxic relationship that, despite the provision of extensive services that would have allowed them to live separately, persists, which creates tension, causing E.D. to suffer. Both Mother and Father have significant criminal histories, with convictions for OVWIs, battery on law enforcement, domestic battery, invasion of privacy, and more by Mother, plus possession of methamphetamine, possession of a controlled substance on multiple occasions, domestic battery, and more by Father.

[15] Neither Father nor Mother maintained sobriety or consistently took prescribed mental health medications. As recently as January 11, 2022, a meth pipe was observed on a table in open view at Father's home. Father acknowledges a

thirty-year struggle with addiction and has rarely not used methamphetamine for more than a couple of days. Father was closed out of substance abuse treatment a final time in fall 2021 and has not made progress.³

[16] Mother refused mental health medications, did not accept responsibility for DCS involvement, blamed others, failed to control her emotions, and struggled to deal with E.D.'s tantrums. She suffers with serious mental health issues exacerbated by drug addiction, which makes her extremely resistant to assistance from counselors, caseworkers, therapists, transporters, and visit supervisors. Even though multiple service providers were offered in the hopes of finding one with whom Mother could work, no progress toward meeting case goals has occurred. Mother's final inpatient rehabilitation stay occurred in September 2021, and she was using drugs almost immediately upon release. Her methamphetamine use continues several times per week.⁴

[17] E.D. has been a ward of DCS for all but a few months during the past five years. E.D. cannot regulate her emotions with her parents and is only able to interact with one at a time. During and after visits with Mother and Father, E.D. exhibits significant regression and drastically different and unhealthy behaviors. E.D. has bonded very well with her foster parents, who wish to

³ In its brief, DCS included a chart listing Father's more than sixty failed drug screens between February 2019 and December 2021.

⁴ DCS also included a chart listing Mother's more than sixty failed drug screens between January 2019 and December 2021.

adopt her. Her therapist opines that separating E.D. from the foster parents would be very detrimental to her emotional well-being. Likewise, A.C. has bonded very well with her foster parents, who wish to adopt her and provide wonderful care for her. They are the only family she has known.

[18] As our extensive summary of the trial court’s findings demonstrates, the trial court took great pains to examine the totality of the circumstances, consider permanency issues, outline its fact-sensitive reasoning, and conclude that termination was in the best interests of E.D. and A.C. Mother and Father have not shown, and based on our review of the record we cannot say, that the trial court committed clear error in this regard. Additionally, the court’s findings provide more than ample support for the determination of a reasonable probability that the conditions that resulted in the children’s removal or placement outside the home would not be remedied or that the continuation of the parent-child relationship posed a threat to the children’s well-being. Father’s arguments to the contrary constitute requests for us to reweigh the evidence, which we will not do.

Section 2 – Father has not shown that he was denied due process when his counsel did not move for a continuance when Father failed to appear on the second day of the termination hearing.

[19] Father argues that he “was denied his right to the effective representation of counsel by having his parental rights terminated in abstentia [sic].” Father’s Br. at 15. Father asserts that when he did not show up for the second day of the

two-day termination factfinding, his counsel should have moved to continue the hearing. He contends that his counsel's failure to make such a motion denied Father his constitutionally guaranteed due process right to effective counsel.

[20] Our supreme court set forth the following test to judge counsel's effectiveness in termination proceedings:

Where parents whose rights were terminated [at] trial claim on appeal that their lawyer underperformed, we deem the focus of the inquiry to be whether it appears that the parents received a fundamentally fair trial whose facts demonstrate an accurate determination. The question is not whether the lawyer might have objected to this or that, but whether the lawyer's overall performance was so defective that the appellate court cannot say with confidence that the conditions leading to the removal of the children from parental care are unlikely to be remedied and that termination is in the child's best interest.

Baker v. Marion Cnty. Off. of Fam. & Child., 810 N.E.2d 1035, 1041 (Ind. 2004).

[21] At the beginning of the second day of the termination hearing, scheduled on Monday, January 31, 2022, at 9:00 a.m., Father's counsel stated:

I uh, spoke to my client on Thursday and then also um, sent him some text messages about this hearing today, and I did receive a text message from him at 8:57 this morning that said, he was truly sorry, he thought court was tomorrow and there was no way he was able [to] get there, so, tell court that I'm not going to be there because of family problems, and I guess, try to let them know I've done everything. Yes, I want my girls, and [the case manager] would say the same but, I'm stuck because of [Mother]. So, I'm sorry, thanks, please do well. Thanks.

Tr. Vol. 2 at 141-42. DCS pointed out that Father was present at the October 8, 2021 hearing when the January 31, 2022 hearing was set and that a ten-day reminder letter had been sent to Father. Father's App. Vol. 2 at 138-39. In addition, the case manager testified that she saw Father on January 25, 2022, at her office and that she had told him she would "see him on Monday." Tr. Vol. 2 at 242.

[22] Knowing that Father had notice of the second day of his parental rights termination hearing yet did not attend or ask for a postponement but instead requested that counsel "do well," his counsel did her best to represent her client. Father's counsel successfully elicited testimony that he learned to walk away when he became upset. *Id.* at 169. His counsel's cross-examination revealed that Father recently was prescribed new medication, was starting a class, and completed a new assessment. *Id.* at 183, 241. And, due to Father's counsel's efforts, evidence was introduced that Father played with his children, shared a bond with them, and had consistent housing. *Id.* at 166, 242, 243.

[23] However, the court also heard that a responsible parent cannot simply walk away from a small child when the parent gets upset, that lack of follow-through has been a continuing issue with Father, and that he had not removed himself from toxic environments, co-dependent relationships, or ongoing, decades-long drug use. Indeed, as recently as early January 2022, just a couple of weeks before the second day of the termination trial, a meth pipe was observed in plain sight on a table at Father's home. Father's counsel's zealous advocacy ensured that the hearing was fundamentally fair in that the facts demonstrate an

accurate determination of termination. The fact that Father's counsel did not move for a continuance when Father failed to attend the second day of the termination hearing regarding his two children does not diminish our confidence that the trial court's termination decision was proper. Accordingly, we affirm the trial court's termination order.

[24] Affirmed.

Vaidik, J., and Altice, J., concur.