MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

S.A. (Minor Child),

And

P.F. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

February 7, 2023

Court of Appeals Case No. 22A-JT-2099

Appeal from the Blackford Circuit Court

The Honorable Kimberly S. Dowling, Special Judge

Trial Court Cause No. 05C01-2107-JT-60

Appellee-Petitioner.

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] P.M. ("Father") is the biological father of S.A. ("Child"). A.A. ("Mother") is Child's biological mother.[1] The Department of Child Services ("DCS") became involved with Child after receiving a report that Child had been born exposed to THC. On January 23, 2019, DCS filed a petition alleging that Child was a child in need of services ("CHINS") with regard to Mother and Mother's then-husband. The CHINS petition was subsequently amended to include Father. After Father admitted that Child was a CHINS, the juvenile court adjudicated Child to be a CHINS and ordered Father to complete certain services. DCS eventually petitioned to terminate Father's parental rights to Child after he

[1] Mother does not participate in this appeal.

failed to successfully complete the court-ordered services. Following an evidentiary hearing, the juvenile court granted DCS's termination petition. On appeal, Father contends that DCS failed to present sufficient evidence to support the termination of his parental rights. We affirm.

Facts and Procedural History

[2] Child was born to Mother on October 17, 2018. Although Mother's then-husband was initially presumed to be Child's father, it subsequently came to light that Father is Child's biological father. Child was removed from Mother's care on January 23, 2019, after DCS received reports that Child had tested positive for THC at birth and Mother had tested positive for opiates at the time of Child's birth. DCS also received reports that (1) Mother's then-husband had been incarcerated after being convicted of "neglect of a dependent with serious injuries due to injuries suffered by [Child's] half-brother;" (2) Mother had attempted suicide on January 21, 2019; (3) Mother had "threatened to injure or kill [Child] near to the same time as the suicide attempt;" and (4) Mother had alleged that Father had committed acts of domestic violence against her. Ex. Vol. III p. 35. DCS filed a petition alleging that Child was a CHINS. At the time the CHINS petition was filed, Father had not attempted to prove that he was biologically related to Child.

[3] Father's paternity was subsequently established, and he admitted that Child was a CHINS. Following this admission, Father was ordered to engage in various services including, *inter alia*, any program recommended by the DCS family

case manager ("FCM"), including home-based counseling; complete a parenting assessment and follow any recommendations; and complete a substance-abuse assessment and follow all recommendations. The juvenile court ordered Father to keep all appointments with service providers, sign all releases necessary for the FCM to monitor his compliance, allow the FCM or any other service provider to make announced or unannounced visits to his home, refrain from using illegal drugs, submit to drug screens, refrain from criminal behavior, maintain suitable housing and employment, and attend scheduled visits with Child. Father was also ordered to remain in contact with the FCM; to notify the FCM of any arrests as well as any changes in address, household composition, employment, or telephone number; and to pay child support in the amount of $99.00 per week.

[4] Father's participation in services was inconsistent. While Father regularly visited with Child, and the visits were said to have gone well, Father failed a number of drug screens and missed twenty-six other drug screens. Further, while he claims to have received some substance-abuse treatment through the United States Department of Veteran's Affairs (the "VA"), Father has failed to sign the necessary releases for the VA to share information about Father's progress, or lack thereof, with DCS. Father has continued to engage in threatening and violent behavior towards Mother. He was arrested four times throughout the CHINS proceedings. Father did not complete the parenting assessment and, at one point, told the FCM that he "would not do those piddly

services – that he didn't need to do [them], he just wanted to visit with his daughter." Tr. Vol. II p. 66.

[5] On July 26, 2021, DCS filed a petition seeking to terminate Father's parental rights. In the days leading up to the March 18, 2022 evidentiary hearing, Father sent threatening messages to the FCM and posted threatening and demeaning comments about Mother and DCS on Facebook. In one of the messages to the FCM, Father sent a picture of himself shooting a firearm and stated that he may "make national news" and that "he'll show [DCS]." Tr. Vol. II p. 97. On August 22, 2022, the juvenile court entered an order terminating Father's parental rights to Child.

Discussion and Decision

[6] "The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children." *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Parental rights, therefore, are not absolute and must be subordinated to the best interests of the child. *Id.* Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly

harmed such that her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

[7] In reviewing termination proceedings on appeal, this court will not reweigh the evidence or assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings and, second, whether the findings support the legal conclusions. *Id.*

[8] In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* "A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it." *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact, or the conclusions do not support the judgment. *Id.*

[9] Father contends that the evidence is insufficient to support the termination of his parental rights to Child. In order to support the termination of Father's parental rights to Child, DCS was required to prove the following:

> (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.…
(iii) The child has been removed from the parent … for at least fifteen (15) months of the most recent twenty-two (22) months … as a result of the child being alleged to be a child in need of services….

(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). Father argues that the evidence is insufficient to prove subsection (B).

[10] It is well-settled that because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only find that one of the conditions listed therein has been met. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Therefore, where the juvenile court determines that one of the factors has been proven and there is sufficient evidence in the record supporting the juvenile court's determination, it is not necessary for DCS to prove, or for the juvenile court to find, the other factors listed in Indiana Code section 31-34-2-4(b)(2)(B). *See In re S.P.H.*, 806 N.E.2d at 882.

[11] When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In so doing, the trial court may consider the parent's response to the services offered through [DCS]. A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change. Additionally, [DCS] was not required to rule out all possibilities of change; rather, it needed to establish only 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) (internal citations and quotations omitted), *trans. denied*.

[12] In concluding that there was not a reasonable probability that the conditions that resulted in Child's removal from Father's care would be remedied, the juvenile court found as follows:

> 4. [Father] suffers from a drug and alcohol addiction that does not appear to be in remission.
> 5. [Father] has pursued treatment for these issues throughout the case, primarily with the VA.
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> 7. Since the removal of [Child], [Father] has resided in Harford City, Indiana which has been visited by DCS and has been determined to be safe and suitable housing.
> 8. [Father] has not permitted DCS or the Court to examine his progress in [substance-abuse] programs for much of the case

because he has refused to allow the VA to communicate with DCS.
9. [Father] was ordered, by the Court, to sign releases so that his providers could share information with DCS.

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12. [Father] was ordered to participate in [a] parenting assessment and follow the recommendations and he failed to participate in the assessment.
13. Father did participate in several supervised visits with [Child]. Supervisors acknowledged that Father's visits went well. Father had loving, positive interactions with [Child].
14. During the case, [Father] tested positive for methamphetamine eight (8) times, tramadol three (3) times, and had twenty-six (26) missed screens through the Cordant drug screen program.
15. During the case, [Father] was arrested and convicted for Operating While Intoxicated ("OWI"), and then later was arrested and entered a plea agreement for [OWI] in a new case; this case was ongoing at the time of [the termination] hearing.…
16. As part of the plea agreement in the latter case, [Father] also agreed to plead guilty to a [d]omestic [b]attery he committed against [Mother].

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20. The Court finds that this case has been pending for three (3) years and during that time a parent had custody of [Child] for less than one (l) month.
21. During the partial month (June and July 2021) the [C]hild lived with [M]other, there were at least three (3) instances of domestic violence that occurred between [M]other and [Father] and two of those occurred in front of [Child].
22. Shortly after the failed attempt at reunification, on or about August 13, 2021, [Father] was arrested for [OWI] and [d]omestic [b]attery.
23. During the arrest for the second OWI and the domestic

> battery, [Father] ran from the arresting officer and refused to follow the officer's direction.
> 24. At or near the time that [Child] was in parents' care, the Blackford County Courts issued two (2) protective orders against [Father], one to protect [M]other, and one to protect [Father]'s son who was living with [Father]'s ex-wife….
> 25. [Father] texted threatening messages to DCS FCM [Alicia] Jones in the days prior to [the evidentiary] hearing.
> 26. Those messages included a profanity laden threat that [Father] "may make the papers and national news" and a picture of [Father] firing a gun.
> 27. [Father] admitted to police that he was intoxicated when he sent the messages.
> 28. [Father] also sent an offensive profanity laden message about [M]other in the text to FCM Jones.
> 29. The messages sent to FCM Jones were also posted on Facebook.

Appellant's App. Vol. II pp. 135–37. In addition, the juvenile court found that "[i]ssues of domestic violence and substance use continue to plague [Father]'s life and, consequently, [Child]'s life;" Father has admitted that he is not currently able to care for Child; and, despite being ordered to do so in the disposition order and a financial order, Father has failed to pay child support. Appellant's App. Vol. II p. 137. Father does not specifically challenge any of the juvenile court's findings on appeal, so they "must be accepted as correct." *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992); *see also M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020).

[13] Rather than challenging the juvenile court's findings, Father points to evidence which he claims indicates that it is possible that, with time, the conditions

resulting in Child's removal from his care could be remedied. Specifically, Father claims that he has made progress in his substance-abuse treatment through the VA. While it is possible that Father has made some progress, DCS was unable to verify Father's progress given Father's failure to authorize the VA to communicate with DCS. Further, DCS "is not required to provide evidence ruling out all possibilities of change; rather, it need only establish that there is a reasonable probability the parent's behavior will not change." *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013) (internal quotation omitted), *trans. denied*. Father's claim on appeal amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do.[2] *See In re S.P.H.*, 806 N.E.2d at 879. Accepting the unchallenged findings as correct, we conclude that the evidence is sufficient to support the juvenile court's order terminating Father's parental rights to Child.

[14] The judgment of the juvenile court is affirmed.

May, J., and Mathias, J., concur.

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[2] Father spends a significant portion of his brief discussing the Indiana Supreme Court's decision in *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641 (Ind. 2015), in support of his contention that the evidence is insufficient to support the termination of his parental rights to Child. Father's reliance on *K.E.* is misplaced, however, because the facts and circumstances of the two cases are not the same, and the facts and circumstances at issue in *K.E.* are readily distinguishable from those presented in the instant matter. Unlike in this case, the father in *K.E.* had been incarcerated when his child was removed and remained so during the CHINS proceedings. Despite his incarceration, he had taken great strides to address his substance-abuse issues and parental deficiencies. *K.E.*, 39 N.E.3d at 347–49. In this case, Father had not been incarcerated throughout the proceedings and had been given numerous opportunities to engage in services, but failed to do so.