

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of E.W. and K.W.
(Minor Children) and
E.W., Sr. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

September 19, 2022

Court of Appeals Case No.
22A-JT-726

Appeal from the Allen Superior
Court

The Honorable Sherry A. Hartzler,
Judge Pro Tem

The Honorable Beth A. Webber,
Magistrate

Trial Court Cause Nos.
02D08-2103-JT-58, -59

Crone, Judge.

Case Summary

- [1] E.W., Sr. (Father), appeals the involuntary termination of his parental rights to his minor children E.W. and K.W. (the Children). We affirm.

Facts and Procedural History

- [2] Father and M.D. (Mother)¹ are the parents of twins, E.W. and K.W., born on November 19, 2018.² The Indiana Department of Child Services (DCS) received a report that the Children had been born eight weeks premature and were admitted to the neonatal intensive care unit (NICU) at Parkview Regional Medical Center. Mother was staying at the Ronald McDonald House at the hospital and was unemployed and homeless. Father was living in a hotel with his mother. DCS Family Case Manager (FCM) Kimm Gorman met with Father and found that the hotel was not suitable for the babies due to being very dirty and filled with bugs. FCM Gorman was also concerned with Father's drug use.
- [3] Before the Children were released from the hospital, in January 2019, Father advised DCS that he and Mother would be renting a suite at an extended stay hotel and that they were saving money so that they would be able to provide for the Children. However, on January 18, DCS received a report alleging that

¹ Mother consented to the adoption of the Children, and she is not a party to this appeal. Accordingly, we will primarily recite the facts most relevant to the termination of Father's parental rights.

² Father and Mother signed paternity affidavits acknowledging Father's paternity to each of the Children.

Father still did not have housing for the Children, had not saved any money, and was unemployed.

[4] On January 29, 2019, the trial court ordered the emergency removal of the Children. On February 8, 2019, DCS filed a petition alleging that the Children were children in need of services (CHINS) due to the parents' inability to provide stable housing or basic necessities for the Children. The Children were subsequently adjudicated CHINS based on both parents' admissions that they could benefit from services which they were unlikely to receive without the coercive intervention of the court. E.W. was placed in foster care, and K.W. stayed in the NICU for needed further care and observation.

[5] In February 2019, the trial court issued a dispositional order requiring Father, among other things, to refrain from criminal activity, maintain safe and suitable housing, cooperate with caseworkers, maintain contact with DCS, enroll and participate in certain services, provide the Children with clean and appropriate clothing, attend and participate in all visits with the Children, and ensure that the Children attend all medical appointments and follow all recommendations of medical professionals. Thereafter, Father failed to appear at the July 2019 review hearing. The trial court found that he had not satisfactorily participated in services as required by the dispositional decree, had failed to maintain communication with DCS, and had failed to regularly visit with the Children. Father again failed to appear for the June 2020 review hearing due to his incarceration in the Wells County Jail. The court found that he had failed to

maintain contact with DCS, had not regularly visited with the Children, and had not demonstrated an ability to benefit from services.

[6] In December 2020, the trial court changed the Children's permanency plan from reunification to termination of parental rights and adoption. At that time, Father resided in a halfway house treatment program where he repeatedly tested positive for methamphetamine. He was on probation from a criminal conviction and was at risk of revocation due to his drug use. Father has an extensive criminal history including drug use and domestic battery dating back to 2012, and the court noted that Father essentially has had "no time frame [free] from criminal activity." Appellant's App. Vol. 2 at 79. Additionally, Father's participation in reunification services had been only sporadic.

[7] On March 16, 2021, DCS filed its petition to terminate Father's parental rights. Termination factfinding hearings were scheduled for August and September 2021. Although Father's counsel appeared at those hearings, Father did not appear. Accordingly, the factfinding was rescheduled and held on December 6, 2021. Father appeared in person with counsel at the December hearing. Mother consented to the termination of her parental rights and the adoption of the Children. On March 4, 2022, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside Father's care will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship between Father and the Children poses a threat to the Children's well-being; (3) termination of the parent-child

relationship between Father and the Children is in the Children's best interests; and (4) DCS has a satisfactory plan for the Children's care and treatment, which is adoption by the current foster family. Accordingly, the trial court determined that DCS had proven the allegations of the petitions to terminate by clear and convincing evidence, and therefore it terminated Father's parental rights. This appeal ensued.

Discussion and Decision

[8] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed." *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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 that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. 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. 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.

Id. at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

Section 1 – Sufficient evidence supports the trial court’s conclusion that there is a reasonable probability of unchanged conditions.

[10] Father first challenges the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in the Children’s removal from and continued placement outside his care will not be remedied. In determining whether there is a reasonable probability that the conditions that led to the Children’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to their placement and retention in foster care.” *Id.* Second, “we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “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.” *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS “need not rule out all possibilities

of change; rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change." *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, the Children were initially removed from the home and remained outside of Father's care for a multitude of reasons, including housing and employment instability and concerns about the Children's medical needs due to their premature birth. Both Children suffer from extreme physical ailments and developmental delays. E.W. had a brain hemorrhage at birth. He has a seizure disorder and is being monitored for cerebral palsy. He has sensory issues, fine motor delays, and developmental delays. K.W. was born with a hole in her heart chamber, and she also suffers from torticollis, where her head twists to one side. She sees a cardiologist regularly as well as a developmental doctor and a neurologist.

[12] The evidence indicates that from the outset of the CHINS case, Father has failed to consistently participate in offered reunification services, and many services were closed out due to Father's lack of participation. When not incarcerated, Father has for the most part remained homeless. Indeed, Father has continued to abuse drugs and commit crimes throughout the pendency of the CHINS proceeding. The trial court found that Father was involved in seven pending criminal matters in three separate counties from February of 2019 to December 2021. Father was most recently convicted of level 6 felony domestic battery and level 6 felony theft, and he is currently incarcerated following the revocation of his probation with a potential release date in February 2023.

There is no question that Father’s habitual pattern of substance abuse and criminal conduct has resulted in continued neglect of the Children such that “there is a substantial probability of future neglect or deprivation.” *K. T.K.*, 989 N.E.2d at 1234. The evidence supports the trial court’s conclusion that there is a reasonable probability that the conditions that led to the Children’s removal and continued placement outside Father’s care will not be remedied.

Section 2 – DCS made reasonable efforts aimed at reunification.

[13] Father next asserts that DCS failed to engage in reasonable efforts aimed at reunification of the family prior to termination.³ To protect a parent’s due process rights in the context of termination proceedings, DCS must have made reasonable efforts to preserve or reunify the family during the CHINS proceedings. *In re T.W.*, 135 N.E.3d 607, 614-15 (Ind. Ct. App. 2019), *trans. denied*. “What constitutes ‘reasonable efforts’ will vary by case, and ... it does not necessarily always mean that services must be provided to the parents

³ The State correctly notes that DCS is not required to provide parents with reunification services prior to seeking termination of parental rights. *See In re J.W., Jr.*, 27 N.E.3d 1185, 1190 (Ind. Ct. App. 2015) (“The Indiana Supreme Court has long recognized that, in ‘seeking termination of parental rights,’ the DCS has no obligation ‘to plead and prove that services have been offered to the parent to assist in fulfilling parental obligations.’”) (quoting *S.E.S. v. Grant Cnty Dep’t of Welfare*, 594 N.E.2d 447, 448 (Ind. 1992)), *trans. denied*. However, parents facing termination proceedings are afforded due process protections, so when the constitutionally protected right of parents to establish a home and raise their children is at issue, we have the discretion to consider whether that right has been adequately protected by the process involved. *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied* (2020).

[But] it does not ask too much of DCS to behave reasonably under such grave circumstances.” *Id.* at 615.

[14] Here, DCS made reasonable efforts to preserve or reunify Father’s family. The record establishes that DCS offered numerous services to Father aimed at reunification, but Father undermined DCS’s efforts by failing to consistently participate and continuing to engage in criminal activity throughout the pendency of the CHINS case. In other words, the reason DCS was unable to reunify Father and the Children was Father’s own conduct, not any dereliction of duty by DCS. Father’s assertions to the contrary are simply a request for us to reweigh the evidence and reassess witness credibility, which we will not do. We have stated that the time for a parent to rehabilitate himself is during the CHINS process, before DCS files a termination petition. *Prince v. Dep’t of Child Servs.*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Simply put, Father failed to do so. We affirm the trial court’s decision to terminate Father’s parental rights.

[15] Affirmed.

May, J., and Weissmann, J., concur.