

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
A.T., Z.T., and B.T. (Minor
Children) and
S.T (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

February 5, 2021

Court of Appeals Case No.
20A-JT-1391

Appeal from the Elkhart
Circuit Court

The Honorable Michael A.
Christofeno, Judge

The Honorable Deborah
Domine, Magistrate

Trial Court Cause Nos.
20C01-2001-JT-5
20C01-2001-JT-6
20C01-2001-JT-7

Mathias, Judge.

[1] S.T. (“Father”) appeals the Elkhart Circuit Court’s order terminating his parental rights to his three children.¹ Father claims that the evidence was insufficient to support the trial court’s decision.

[2] We affirm.

Facts and Procedural History

[3] Father has three children: B.T., born in 2006; Z.T., born in 2009; and A.T., born in 2015. A.T. was adjudicated a child in need of services (“CHINS”) in 2016. Appellant’s App. Vol. VII, pp. 113–14. Z.T. and B.T. were adjudicated CHINS once in 2014 and again in 2018. Appellant’s App. Vol. II, pp. 216–17; Ex. Vol. IV at 188. In May 2018, the Department of Child Services (“DCS”) removed all three children from Father’s care. Tr. pp. 83, 99, 100; Ex. Vol. 4 at 244–45.

During the months leading up to the children’s removal, when Father and the children became homeless and lacked reliable food and transportation, DCS made substantial efforts to help Father gain stability. *See* Tr. pp. 82–83. In January 2018, Father and the children were living in a hotel. Father did not have consistent income. He told DCS that he had no food for the children and that his funds were nearly exhausted at that time. To help Father stay on his feet, DCS paid for the family to stay two additional weeks in the hotel and

¹ The children’s mother’s parental rights were terminated on April 11, 2019, Appellant’s App. Vol. II, pp. 223–26, and she did not appeal that decision.

provided Father two-months' worth of gas cards. And when Father found an apartment for himself and the children, DCS paid for the security deposit, the first month's rent, and the utilities. Father lost the apartment in March 2018, after living there only two months, because of his failure to pay rent. Tr. pp. 73, 99, 100.

[4] Despite receiving this assistance, as well as referrals to a litany of service providers specializing in mental health and clinical therapy and parenting education, Father struggled to achieve stability. His turbulent behavior and inconsistencies led the children to report that living with Father is “scary” and that they often ate food from trash cans. Tr. p. 132; Appellant’s App Vol. II, p. 176. During this time, he also tested positive for illicit substances. Tr. pp. 79, 80; Ex. Vol. V at 104–20. After the children were removed from Father’s care in May, DCS spent the next several months working with Father toward gaining stable housing and employment, obtaining clinical treatment to address his mental health needs, and demonstrating that he was able to care for the children. Father did not make progress.

[5] Father did not communicate consistently with DCS or with service providers because he failed to keep a working phone. And he did not participate consistently in scheduled therapy sessions or follow through with recommended medical evaluations. Instead, Father blamed his inconsistencies on “all the court stuff in [his] life and DCS telling [him] to do this, do that.” Tr. p. 33. Although he was permitted supervised visits with the children, Father often either showed up late or left early. When he was present, visitation supervisors

worried that he was under the influence of illicit substances. Eventually, the visits were halted because Father failed to show up on three separate occasions.

- [6] In January 2020, DCS filed a petition to terminate Father’s parental rights to his three children.² The trial court held an evidentiary hearing on June 22, 2020, during which it heard testimony from Father and four other witnesses. Four days later, the trial court entered an order terminating Father’s parental rights. Appellant’s App. Vol. II, pp. 172–83. He now appeals.

Standard of Review

- [7] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). We neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. *Id.* 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.* 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*.

² DCS originally filed a petition to terminate Father’s parental rights in March 2019, which the trial court granted by default judgment after Father failed to attend the April 11, 2019 evidentiary hearing. Appellant’s App. Vol. IV, pp. 223–26. Father appealed, and a panel of this court reversed the default judgment, finding that Father had not received proper notice under *Indiana Trial Rule 55(B)*. *In re A.T.*, No. 19A-JT-1034, 2019 WL 6334754, at *2 (Ind. Ct. App. Nov. 27, 2019).

[8] Here, as [Indiana Code section 31-35-2-8\(c\)](#) requires, the trial court’s judgment contains special findings and conclusions; therefore, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Moreover, we accept unchallenged findings as true and determine only whether the unchallenged findings are sufficient to support the judgment. *In re A.M.*, 121 N.E.3d 556, 562 (Ind. Ct. App. 2019), *trans. denied.*; *see also T.B. v. Ind. Dep’t of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012) (holding that when the trial court’s unchallenged findings support termination, there is no error), *trans. denied*.

Termination of Parental Rights

[9] Father argues that the trial court’s order terminating his parental rights is not supported by clear and convincing evidence. [Indiana Code section 31-35-2-4\(b\)\(2\)](#) provides that a petition to terminate parental rights must allege:

(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.

[10] DCS must prove each allegation by clear and convincing evidence. [Ind. Code § 31-37-14-2](#); *In re G.Y.*, 904 N.E.2d 1257, 1260 (Ind. 2009). But because [Section 31-35-2-4\(b\)\(2\)\(B\)](#) is written in the disjunctive, the trial court is required to find that only one of the three factors has been established by clear and convincing evidence. *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010).

[11] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester*, 839 N.E.2d at 148. It is sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. [§ 31-35-2-8\(a\)](#).

[12] The purpose of terminating parental rights is not to punish parents but instead to protect children. *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Although parental rights have a constitutional dimension, the law allows for the termination of such rights when the parties are unable or unwilling to meet their

responsibilities as parents. *Id.* Indeed, parental interests must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights. *G.Y.*, 904 N.E.2d at 1259.

[13] Here, Father claims DCS failed to present sufficient evidence to prove there is a reasonable probability that the conditions resulting in the children’s removal will not be remedied and that termination of his parental rights is in the children’s best interests.³ We address each of these arguments in turn.

I. The trial court did not err in concluding the conditions which resulted in the children’s removal would not be remedied.

[14] DCS removed the children because Father was unable to parent the children and maintain stable housing and income. Father argues DCS did not prove by clear and convincing evidence that these conditions will not be remedied, asserting that “he cared enough about his children to obtain short-term help for their housing and food” when he and the children were homeless and without food in 2018. Appellant’s Br. at 15. Father also contends that restrictions implemented in response to the COVID-19 pandemic “had an effect on [his] ability to obtain full-time employment” and hindered his efforts “to show

³ We note that Father does not raise an independent argument addressing whether the continuation of the parent-child relationship poses a threat to the children’s well-being or whether the children have been properly adjudicated CHINS on two separate occasions. Even if Father had raised such arguments, we need only consider whether there is a reasonable probability that the conditions resulting in the children’s removal will not be remedied because Section 4(b)(2)(B) is written in the disjunctive. I.C. § 31-35-2-4(b)(2); *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010).

[DCS] and the court his seriousness about obtaining the return of his children.” *Id.* at 16. These arguments are unavailing.

[15] The trial court heard testimony from five witnesses about Father’s inability both before and after the onset of the COVID-19 pandemic to secure stable income and housing.

[16] A family consultant tasked with helping Father find a job and a place to live recounted Father’s lack of participation with family consulting services. The consultant testified that Father had obtained employment four or five different times since December 2019, but he lost each job within a week because he either showed up to work late or did not show up at all. Tr. pp. 136–37. And contrary to Father’s suggestion that the COVID-19 pandemic hindered his efforts to maintain employment, the consultant explained that “despite the [COVID-19] restrictions, we could still work and communicate virtually.” *Id.* at 140. Simply put, Father’s behavior and his failure to keep a working phone number hindered his ability to maintain employment—not COVID-19. *Id.* at 134–35, 140.

[17] In addition, Father has failed to maintain stable housing since January 2018, more than two years before the onset of the COVID-19 pandemic. Even after DCS provided Father funds to secure an apartment, he and the children became homeless within two months. *Id.* at 73, 99, 100. The children’s Court Appointed Special Advocate (“CASA”) remarked that, after the children were removed, Father frequently claimed he had secured housing but never provided

a consistent address. *Id.* at 131. The CASA further noted that on at least one occasion Father provided an address that did not exist. *Id.* at 138. And in his own testimony, Father asserted that he was currently living on High Street even though he had not lived there for several weeks. *Id.* at 141–42. The family consultant explained that “because [Father] never had a consistent job, we couldn’t work on budgeting to work on the housing.” *Id.* at 137. While the family consultant attempted to help Father apply for subsidized housing, those efforts were unsuccessful because he “could never get ahold of [Father].” *Id.*

[18] In short, DCS proved by clear and convincing evidence that the conditions leading to the children’s removal will not be remedied. Father has not maintained stable income or housing since 2018, he has not maintained communication with DCS or other service providers, and he has not seriously addressed his substance abuse issues or mental health needs despite the services made available to him. For all of these reasons, we find that the trial court did not clearly err in concluding the conditions which resulted in the children’s removal will not be remedied.

[19] We turn now to Father’s claim that the trial court clearly erred in concluding that termination of his parental rights was in the children’s best interests.

II. The trial court did not err in concluding termination is in the children’s best interests.

[20] In concluding termination is in the children’s best interests, the trial court found that Father made no progress toward improving his circumstances in a way that

would allow the children to return to his care. We find that the trial court did not clearly err.

[21] When we consider whether termination is in the children’s best interests, we consider the totality of the circumstances. *In re A.W.*, 62 N.E.3d 1267, 1275 (Ind. Ct. App. 2016). Indeed, the court need not wait until the children are irreversibly harmed before terminating the parent-child relationship. *S.E. v. Dep’t of Child. Servs.*, 15 N.E.3d 37, 47 (Ind. Ct. App. 2014), *trans. denied*. Although not dispositive, permanency and stability are key considerations in determining the children’s best interests. *G.Y.*, 904 N.E.2d at 1265. “A parent’s historical inability to provide a suitable environment along with the parent’s current inability to do the same supports a finding that termination of parental rights is in best interests of the children.” *In re A.P.*, 981 N.E.2d 75, 82 (Ind. Ct. App. 2012). Likewise, the testimony of service providers, “in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination in the child’s best interest.” *A.D.S.*, 987 N.E.2d at 1158–59 (Ind. Ct. App. 2013).

[22] Here, Father contends the trial court erred in concluding that termination is in the children’s best interests. He claims termination is not in the children’s best interests because the “children had behavioral issues, B.T. did not want to be adopted, and there was concern about what was going on in the case,” and because the “CASA was concerned about splitting up the children and having them in different homes.” Appellant’s Br. at 16–17. Contrary to Father’s claims, testimony presented to the trial court and the ample, clear and convincing

evidence demonstrating that the conditions resulting in the children's removal will not be remedied are sufficient to support the trial court's conclusion that termination of Father's parental rights is in the best interests of the children.

[23] For example, the CASA testified that she did not ever consider placing the children back with Father because he “was not able to show stability, consistency, with a home, with a job, wasn't able to support the children and what they need.” Tr. p. 126. She further described that “the children have already disclosed how when they were homeless they had to eat out of trash can[s] So those are things that could all happen to them again” if they were returned to Father's care. Tr. p. 132. The family case manager testified that termination is in the best interests of the children because “[i]t would allow for the children a chance to have permanency, permanency with caregivers who can provide them that stability they need, that unconditional love that they need, that supervision that they need.” Tr. p. 96. And, perhaps most importantly, “they will know where their next meal is coming from.” *Id.*

[24] The trial court's conclusion that termination is in the best interests of the children is further supported by clear and convincing evidence that, lacking consistent income, Father was unable to provide the children consistent meals. Appellant's App. Vol. II, p. 176. Moreover, even after the children were removed, Father continued using illicit substances. He tested positive for synthetic marijuana as recently as February 2020. Appellant's App. Vol. II, p. 179; Ex. Vol. V at 104. Father consistently failed to utilize the mental health services, family counseling, and clinical therapy made available to him for two

years after the children were removed. Tr. pp. 76–77. And whereas Father’s behavior led the children to describe living with him as “scary,” Tr. p. 132, the children are doing well in their current placements. Tr. pp. 128–29.

- [25] In short, DCS proved by clear and convincing evidence that termination of Father’s parental rights is in the children’s best interests. Father was unable to achieve stability or to improve his circumstances in a way that would allow him to properly care for the children. For all of these reasons, we find that the trial court did not clearly err in concluding that termination of Father’s parental rights is in the children’s best interests.

Conclusion

- [26] The trial court’s order terminating Father’s parental rights to his three children is supported by ample, clear and convincing evidence.
- [27] Affirmed.

Altice, J. and Weissmann, J. concur.