

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
L.K. (Minor Child);

J.K. (Father),

Appellant-Respondent

v.

The Indiana Department of
Child Services,

Appellee-Petitioner.

March 21, 2023

Court of Appeals Case No.
22A-JT-1730

Appeal from the Allen Superior
Court

The Honorable Lori Morgan,
Judge

Trial Court Cause No.
02D08-2109-JT-271

Memorandum Decision by Judge Pyle

Judges Bradford and Kenworthy concur.

Pyle, Judge.

Statement of the Case

[1] J.K. (“Father”) appeals the termination of the parent-child relationship with his daughter, L.K. (“L.K.”). He argues that there is insufficient evidence to support the termination. Concluding that there is sufficient evidence to support the termination, we affirm the trial court’s judgment.¹

[2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of Father’s parental relationship with L.K.

Facts

[3] The evidence and reasonable inferences that support the judgment reveal that Father and Mother are the parents of daughter L.K., who was born with fetal alcohol syndrome in August 2019. Mother is also the parent of two sons, L.T. (“L.T.”), who was born in October 2016, and Lo.T. (“Lo.T.”), who was born in October 2014.

[4] In February 2020, when L.K. was six months old, Mother and Father, who were not married, were involved in a domestic violence incident. The State

¹ L.K.’s mother (“Mother”) voluntarily relinquished her parental rights and is not participating in this appeal.

charged Father with Level 6 felony domestic battery and Class A misdemeanor domestic battery. In addition, the trial court issued a protective order (“the protective order”) prohibiting Father from having contact with Mother until the case had been tried and Father had been sentenced if found guilty.

[5] In March 2020, the Department of Child Services (“DCS”) filed an amended petition alleging that L.K. was a child in need of services (“CHINS”). The petition alleged that Father had a pattern of domestic violence committed in the presence of L.K., L.T., and Lo.T. (collectively “the children”). Father admitted that L.K. was a CHINS. The children were not removed from the home at that time and apparently remained with Mother.

[6] Also, in March 2020, the trial court issued a CHINS dispositional order that required Father to: (1) refrain from all criminal activity; (2) maintain appropriate sustainable housing at all times; (3) provide L.K. with clean, appropriate clothing when requested; (4) enroll in non-violence counseling at the Center for Nonviolence Program and successfully complete the program; (5) complete a mental health assessment and follow all recommendations; (6) attend visits with L.K.; (7) abstain from the use of illegal drugs; and (8) abide by the terms of the protective order.

[7] At some point before the summer of 2020, DCS removed the children from Mother. DCS did not place L.K. with Father because of his pattern of domestic violence and his pending criminal charges. However, Father began attending supervised visits with L.K.

[8] Three months later, in September 2020, the State charged Father with: (1) Count 1 - Class A misdemeanor invasion of privacy for violating the protective order; (2) Count 2 - Class A misdemeanor possession of marijuana; (3) Count 3 - Class A misdemeanor driving while suspended with a prior judgment; and (4) Count 4 - Class C misdemeanor possession of paraphernalia. In October 2020, Father pleaded guilty to the first three counts, and the State dismissed the fourth count. The trial court sentenced Father to 365 days in the Huntington County Jail for each count and ordered the sentences to run concurrently with each other. In addition, the trial court ordered Father to serve sixty days in the county jail and to be on informal probation for 305 days.

[9] Also, in October 2020, DCS placed L.K. and her brother, L.T., together in foster care.² Both children were diagnosed with Autism, and L.K. wore foot braces because her feet turned in, causing her to frequently trip. L.K. participated in occupational therapy to address her feeding issues because she frequently overstuffing herself when she ate, which caused her to gag. She also participated in physical therapy and developmental therapy.

[10] In December 2020, after having served sixty days in jail for the offenses that he committed in September 2020, Father pleaded guilty to the February 2020 charges of Level 6 felony domestic battery and Class A misdemeanor domestic battery. The trial court sentenced Father to one year and 183 days and

² At some point, DCS placed Lo.T. with his biological father.

suspended the entire sentence to probation. Two months later, Father tested positive for spice, and the State filed a petition alleging that Father had violated probation.

[11] Also, in February 2021, Father again began attending supervised visits with L.K. However, Father, who did not believe that L.K.'s Autism diagnosis was accurate, often became frustrated with L.K.'s behavior. For example, when L.K. did not want to eat during visits, Father used a loud voice to reprimand her, and L.K. did not react well to Father's loud voice. According to the visitation supervisor, during the visits, L.K. could often be found under the table and chairs in the visitation room. In addition, the visitation supervisor noticed that Father was frequently preoccupied with his own personal issues during the visits and spent time on his cell phone. During the course of the visits, the visitation supervisor saw no bond between Father and L.K.

[12] In March 2021, Father attended a substance abuse assessment at Dockside Services and began attending the recommended substance abuse group. In addition, in April 2021, Father began attending a domestic violence intervention program at the Center for Nonviolence.

[13] In June 2021, Father admitted that he had violated his probation when he had tested positive for spice in February 2021. Father also acknowledged that he had used spice during the pendency of the CHINS proceedings because he had thought that "[m]aybe they c[ould not] test [him] for th[at] kind of thing." (Tr. Vol. 2 at 148). As a result of this probation violation in Father's criminal case,

the trial court placed Father on sixty days of electronic monitoring home detention.

- [14] In September 2021, DCS filed a petition to terminate Father's parental relationship with L.K. Also, in September 2021, L.K.'s foster mother asked Father to provide L.K. with clothing for the upcoming cold weather. L.K.'s foster mother also asked Father to provide L.K. with a pair of adaptive shoes to wear with her foot braces. However, Father did not provide L.K. with the requested items. In November 2021, Father married Mother.
- [15] In December 2021, Father completed the substance abuse group at Dockside Services, and in January 2022, Father completed the nonviolence intervention program at the Center for Nonviolence. However, in February 2022, Father used methamphetamine and became involved in another domestic violence incident with Mother. Also, in February 2022, Father was incarcerated for another probation violation. In addition, Father's supervised visits ended in February 2022 because he had not maintained contact with the visitation supervisor.
- [16] At the two-day March 2022 termination hearing, the trial court heard the evidence as set forth above. In addition, L.K.'s foster mother testified that then-two-year-old L.K. had been participating in First Steps therapy sessions at the foster parents' home. However, according to the foster mother, when L.K. would turn three years old in August 2022, the therapy sessions would take place outside the home. At that point, someone would need to transport L.K.

to the therapy sessions. L.K.'s foster mother further testified that L.K. needed constant supervision and a set routine. L.K. also "need[ed] things [to be] exactly the same[.]" (Tr. Vol. 2 at 60). According to L.K.'s foster mother, if anything changed, the change "trigger[ed] usually tantrums, behaviors where [L.K.] c[ould not] be soothed or it [was] a struggle to get her soothed." (Tr. Vol. 2 at 65). L.K.'s foster mother further testified that she and her husband hoped to adopt L.K.

[17] In addition, CASA Suzanne Lange ("CASA Lange") testified that termination was in L.K.'s best interests. In support of her recommendation, CASA Lange pointed to Father's recent methamphetamine use and recent domestic violence incident with Mother. CASA Lange also testified that L.K. and her brother both had special needs and that it would cause L.K. "significant emotional harm" to remove her from her brother. (Tr. Vol. 2 at 220).

[18] Father acknowledged that during the course of the CHINS proceedings, he had committed additional criminal offenses, violated probation, and used illegal substances. He also acknowledged that he did not have stable housing, employment, or a driver's license. Father testified that he wanted to "see [L.K.] grow up and [he] want[ed] to be there to raise her." (Tr. Vol. 2 at 182).

[19] In June 2022, the trial court issued a detailed order terminating Father's parental relationship with L.K. Father now appeals.

Decision

[20] Father argues that there is insufficient evidence to support the termination of his parental relationship with L.K. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Offices*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[21] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[22] A petition to terminate parental rights must allege:

(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.

* * * * *

(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. *K.T.K.*, 989 N.E.2d at 1231.

[23] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record.” *Id.*

- [24] Here, Father first argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in L.K.'s removal or the reasons for her placement outside the home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to L.K.'s well-being.
- [25] However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in L.K.'s removal or the reasons for her placement outside the home will not be remedied.
- [26] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires a trial court to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior criminal history, drug and alcohol abuse, history of neglect,

failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring a trial court to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *E.M.*, 4 N.E.3d at 643.

[27] Here, our review of the evidence reveals when DCS removed L.K. from Mother, DCS did not place L.K. with Father because of his history of domestic violence and pending criminal charges. During the pendency of the CHINS proceeding, Father committed additional criminal offenses, including violating the protective order, and he twice violated probation. He was also involved in another domestic violence incident with Mother just a few weeks before the termination hearing. In addition, during the pendency of the CHINS proceeding, Father used illegal drugs, including methamphetamine and spice. Further, at the time of the termination hearing, Father had neither employment nor housing. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in L.K.'s removal or the reasons for placement outside the home will not be remedied.

[28] Father also argues that there is insufficient evidence that termination is in L.K.'s best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of

the evidence. *In re Termination of the Parent-Child Relationship with D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial 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.* In addition, a child's need for permanency is a central consideration in determining the child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[29] Here, our review of the evidence reveals that L.K. has been diagnosed with Autism and participates in occupational, physical, and developmental therapies. L.K. also needs constant supervision and a set routine. Although Father did not believe that L.K. is autistic, Father was often frustrated with L.K.'s behavior during visits. In addition, the visitation supervisor saw no bond between Father and L.K. Further, CASA Lange testified that termination was in L.K.'s best interests. CASA Lange's testimony, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in L.K.'s best interests.

[30] Affirmed.

Bradford, J., and Kenworthy, J., concur.