

MEMORANDUM DECISION

Pursuant to IND. APPELLATE RULE 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of L.P. and L.W.
(Minor Children) and
D.P. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

August 5, 2022

Court of Appeals Case No.
22A-JT-618

Appeal from the Greene Circuit
Court

The Honorable Erik C. Allen,
Judge

Trial Court Cause Nos.
28C01-2109-JT-17
28C01-2109-JT-19

Crone, Judge.

Case Summary

- [1] D.P. (Father) appeals the termination of his parental rights to his minor children L.P. and L.W. (the Children), challenging the trial court’s finding that he voluntarily consented to the termination of his parental rights. We affirm.

Facts and Procedural History

- [2] The evidence in support of the judgment and the undisputed findings of fact follow. D.P.W. (Mother) gave birth to L.P. in October 2017. L.P. was adjudicated a child in need of services (CHINS) in March 2020. L.W. was born in November 2020 and was adjudicated a CHINS in December 2020.
- [3] In September 2021, the Indiana Department of Child Services (DCS) filed verified petitions for the involuntary termination of the parent-child relationships between Father and Mother (the Parents) and the Children. DCS sought termination due to the Parents’ substance abuse issues and their inability to manage the Children’s complex medical issues.
- [4] On November 5, 2021, the Parents met at a DCS office to discuss progress in the Children’s CHINS cases. Tr. Vol. 2 at 51. However, at the outset, the Parents informed the family case manager (FCM) that they wanted to discuss voluntary termination of parental rights. They said that they were done with services, they had been thinking about it for “quite some time[,]” and they did not want to put their Children through any more. *Id.* at 94. The FCM asked the Parents repeatedly if they were sure that they wanted to relinquish their parental

rights, and they assured her that they were. *Id.* at 95. The FCM and the Parents then briefly discussed planning a goodbye visit with the Children.

[5] On November 19, 2021, a child and family team meeting was held at the office of Elizabeth Hildebrand, Father’s therapist. Those present at the meeting included Hildebrand, the FCM, Father, Mother, and Mother’s attorney. Father’s counsel had agreed to have Mother’s attorney read and explain the voluntary relinquishment of parental rights form to Father.

[6] Mother’s attorney provided each Parent with a copy of the form, read the entire form to them, and asked them multiple times whether they had any questions. *Id.* at 79. The forms contained all the advisements required by statute. Appealed Order at 2; Appellant’s App. Vol. 2 at 26-29. After reading each advisement, Mother’s attorney stopped and asked the Parents whether they understood that advisement. Tr. Vol. 2 at 79. She read the advisement that stated that the “consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress, or unless [the parent] is incompetent, or unless the court sets aside my consent.” Appellant’s App. Vol. 2 at 26, 28. *Id.* The FCM then stopped and asked whether they understood that specific sentence. Tr. Vol. 2 at 79-80. She told the Parents that once they signed the form, they could not take it back, and she made sure that they understood that. *Id.* at 80. She made sure that they understood that their signature on the form was irrevocable. *Id.* The voluntary relinquishment of rights form also advised the signer that he or she waives any notice of hearing regarding the termination of parental rights and

that if he or she appears in open court, “the only issue before the court will be whether [his or her] consent was voluntary.” Appellant’s App. Vol. 2 at 26, 28.

[7] Mother’s attorney then accompanied Father and Mother to a bank, where they signed the voluntary relinquishment of parental rights forms before a notary. This transaction was filmed. Father asked some questions and agreed to sign the form. Father did not express any reservation to Mother’s attorney about signing the form. Mother’s attorney filed the forms with the trial court the same day.

[8] On December 5, 2021, the Parents had a goodbye visit with the Children. Two days later, they had a final visit with L.P. Father told her that it was the last time she would ever see him again, which, according to L.P.’s therapist, was “detrimental” to L.P.’s health. Tr. Vol. 2 at 74.

[9] On December 13, 2021, the trial court held a status hearing, during which it noted that both the Parents had executed voluntary relinquishments of their parental rights. Father indicated that he wanted to withdraw his relinquishment of parental rights. Father “believe[d] it should be like a plea agreement and he should be allowed to withdrawal [sic] from it.” Tr. Vol. 2 at 13. Father testified that he did not want to sign the form, but he felt pressured to sign it. *Id.* at 21. The court took under advisement the matter of whether the Parents could withdraw their consent. The court also suspended visitation between the Parents and the Children because they had already had their goodbye visit.

[10] On February 15, 2022, the trial court held a factfinding hearing on the voluntariness of the Parents' consents to termination of their parental rights. Mother indicated that she no longer wished to contest her voluntariness. The court proceeded to hear evidence regarding the voluntariness of Father's consent. Father, Father's therapist, Mother's attorney, the FCM, and the Children's court-appointed special advocate testified. Father testified that Mother's attorney read the form to him, discussed the meaning of the provisions, and answered his questions. *Id.* at 46. Father also testified that no fraud occurred to induce him to sign the form, that no one forced him to sign it, and that he was competent when he signed it. *Id.* at 46-47, 58. Father testified that he believed that the form was not legal until the judge accepted it and that he was badgered into signing the form. *Id.* at 43-45, 47-48. However, he testified that there was no badgering at the bank when he signed the consent. *Id.* at 49. The video of the signing and notarization of the form at the bank was admitted into evidence.

[11] Mother's attorney testified that she read aloud to the Parents the advisement informing them that their consent was permanent and could not be revoked unless it was obtained by fraud or duress or unless they were incompetent, that she told the Parents they could not take back their consent, and that she made sure that they understood that their signature on the form was irrevocable. *Id.* at 79-80. Mother's attorney and the FCM testified that they did not witness any badgering to get Father to sign the form. *Id.* at 83, 93.

[12] Hildebrand testified that no one told the Parents that they needed to sign the form and that the decision was left completely up to them. *Id.* at 67-68. She testified that she did not observe any coercion or fraud during the meeting and that Father appeared competent and unimpaired. *Id.* at 69. She also testified that Father told her that he was going to sign the form, but that when he met with her individually after the meeting, he told her that he was not sure that he was going to go through with termination. *Id.* at 66. Hildebrand stated that she explained to him that the consent was irrevocable, but Father thought that he “could take it back due to pressure, promises that we had talked about in the team meeting.” *Id.*

[13] On March 3, 2022, the trial court issued its order terminating Father’s parental rights to the Children. In relevant part, the trial court found as follows:

4. The father further acknowledges there was no fraud involved that caused him to sign the form and that he was competent at the time the form was signed. The father testified that he was not forced to sign the form but he felt “badgered,” however, he said there was no badgering at the bank where the form was actually signed and notarized. The parents had multiple discussions with the FCM and service providers regarding voluntary termination of parental rights and the parents actually had a “good-bye visit” with the children. The father participated in planning the “good-bye visit.”

....

6. Elizabeth Hildebrand was the father’s therapist, she supervised visits between the parents and the children, and at one time was the child [L.P.’s] therapist. The November 19, 2021 meeting took

place in her office, which resulted in the parents signing the voluntary relinquishment of parental rights forms. The father represented to her that he wanted to proceed with voluntarily terminating his parental rights, but he told her later in the meeting he had some reservations and believed the consent could be withdrawn. Ms. Hildebrand testified that she did not observe any coercion or fraud during the November 19, 2021 meeting, and that the father appeared competent and not impaired in any fashion.

7. The father testified that he believed his consent could be revoked and he signed the form because he “wanted to see what termination would look like.” The father also testified that he felt badgered and he signed the form in order to stop the badgering, however, others present at the meeting deny any badgering. Further the mother and father walked down the block from Ms. Hildebrand’s office to the bank with [Mother’s attorney] and signed the forms at the bank in front of the Notary, and the father acknowledged there was no badgering at the bank. The parties stipulated to the admissibility of the video at the bank and it does not display any type of badgering behavior and supports the conclusion that the execution of the form was done voluntarily. The Court concludes the father’s testimony that he was the target of badgering behavior is not credible.

8. Based upon the contents of the Voluntary Relinquishment of Parental Rights form and on the testimony of the father and [Mother’s attorney], the Court concludes that the evidence is clear that the father was advised in accordance with I.C. 31-35-1-12.

....

11. The Court is limited to considering whether the father’s consent was voluntary and after considering all of the evidence

presented the Court concludes the father's consent was voluntary.

12. The Court makes the following findings based upon the evidence presented: Termination of the parent-child relationship has been requested by the father; the father was advised of his constitutional and other legal rights and of the consequences of his actions and the termination of his parental rights; there is no competent evidence of probative value that fraud or duress was present when the voluntary relinquishment was given or that the father was incompetent; the Court now finds that the father knowingly and voluntarily consented to the termination of the parent-child relationships; termination of the parent-child relationships is in the best interest of the children; the allegations described in the petition to terminate the parent-child relationship are true and the other requirements of IC 31-35 have been met; DCS has developed a satisfactory plan of care and treatment for the children as follows: adoption; the Petitions for Termination of Parental Rights should be and hereby are granted specific to the father.

Appealed Order at 2-3. Father appeals.

Discussion and Decision

[14] Father challenges the trial court's finding that his consent to termination of his parental rights was voluntary. In reviewing his argument, we note that we apply 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 the evidence nor assess the credibility of witnesses and consider only the evidence and reasonable inferences arising therefrom that support the judgment. *In re M.R.*, 728 N.E.2d 204, 207 (Ind. Ct. App. 2000),

trans. denied. “In deference to the trial court’s unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous.”¹ *Id.*

[15] In addition, where “a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous.” *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013) (citing Ind. Trial Rule 52(A)). We consider whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *Id.* at 1230. When findings of fact are unchallenged, this Court accepts them as true. *In re S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). In this case, the termination order often refers to what someone testified to. “A court or an administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z. Rather, the trier of fact must find that what the witness testified to is the fact.” *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 553 (Ind. Ct. App. 2014) (quoting *In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003)). “As such, where a trial court’s findings are merely recitations of a witness’ testimony, they cannot be construed as true factual determinations.” *Id.* (citation and quotation marks omitted).

¹ Father contends that he presents a question of law upon which this Court should exercise de novo review. Appellant’s Br. at 15. We disagree. As will become apparent in our discussion, Father’s argument is essentially a challenge to the sufficiency of the evidence.

[16] “The voluntary termination of the parent-child relationship is controlled by statute.” *Neal v. DeKalb Cnty. Div. of Fam. & Child.*, 796 N.E.2d 280, 282 (Ind. 2003). Indiana Code Section 31-35-1-6 authorizes a trial court to accept a parent’s voluntary consent to termination of parental rights only where the following conditions are satisfied:

(a) [T]he parents must give their consent in open court unless the court makes findings of fact upon the record that:

(1) the parents gave their consent in writing before a person authorized by law to take acknowledgments; and

(2) the parents were:

(A) advised in accordance with section 12 of this chapter; and

(B) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary.

(b) If:

(1) the court finds the conditions under subsection (a)(1) and (a)(2) have been met; and

(2) a parent appears in open court;

a court may consider only the issue of whether the parent’s consent was voluntary.

[17] Indiana Code Section 31-35-1-12 sets forth the required advisements, including that parents must be advised of the following:

(1) their consent is permanent and cannot be revoked or set aside unless it was obtained by fraud or duress or unless the parent is incompetent;

....

(8) the parents will receive notice of the hearing, unless notice is waived under section 5(b) of this chapter, at which the court will decide if their consent was voluntary, and the parents may appear at the hearing and allege that the consent was not voluntary[.]

[18] Termination by written consent is proper only if a parent appears in open court to acknowledge the consent or if Section 31-35-1-6(a) has been satisfied. *Matter of D.C.*, 149 N.E.3d 1222, 1234 (Ind. Ct. App. 2020) (citing *Neal*, 796 N.E.2d at 285), *trans. denied* (2021). “A parent who executes a voluntary relinquishment of parental rights is bound by the consequences of such action, unless the relinquishment was procured by fraud, undue influence, duress, or other consent-vitiating factors.” *Youngblood v. Jefferson Cnty. Div. of Fam. & Child.*, 838 N.E.2d 1164, 1168 (Ind. Ct. App. 2005) (quoting *M.R.*, 728 N.E.2d at 209), *trans. denied* (2006). A parent challenging his or her consent bears the burden of proof to show that his or her consent was involuntary. *Id.*

[19] Father does not argue that the requirements of Sections 31-35-1-6 and 31-35-1-12 were unmet. He asserts that his consent to termination of his parental rights

was not voluntary because it was not given knowingly and that the trial court erred by failing to examine “more extensively” whether his consent was knowing.² Appellant’s Br. at 18. In support of his argument, he directs us to his testimony that he believed that the consent was not final until the judge accepted it and his therapist’s testimony that he told her that he believed that he could take back his consent. The State contends that Father’s claim that “he thought he could withdraw the consent form is insufficient to establish that the execution of the consent was involuntary given he was specifically advised in writing and in person that he could not revoke it once signed.” Appellee’s Br. at 20.

[20] We observe that the trial court clearly considered the testimony cited by Father because it specifically acknowledged it in the termination order. Appealed Order at 2. However, this was not the only evidence presented to the trial court, and the court considered all the evidence in determining whether Father’s consent was voluntary. The trial court specifically found that “after considering

² Father does not cite any authority for the definition of “voluntary” as used in Section 31-35-1-6. In the context of guilty pleas, voluntariness includes a knowing and voluntary waiver of rights. *See Bautista v. State*, 163 N.E.3d 892, 897 (Ind. Ct. App. 2021) (“In considering the voluntariness of a guilty plea we start with the standard that the record of the guilty plea proceeding must demonstrate that the defendant was advised of his constitutional rights and knowingly and voluntarily waived them.”) (quoting *Turman v. State*, 271 Ind. 332, 392 N.E.2d 483, 484 (1979)). In the context of the waiver of other rights, such as a right to a jury trial, we have required the waiver to be knowing, voluntary, and intelligent. *See Johnson v. State*, 6 N.E.3d 491, 496 (Ind. Ct. App. 2014) (“It is fundamental error to deny a defendant a jury trial unless there is evidence of the defendant’s knowing, voluntary, and intelligent waiver of the right.”). Given the lack of discussion of this question by the parties, we will simply assume for purposes of this appeal, that a voluntary relinquishment of parental rights must be knowing.

all of the evidence presented[,]” Father’s consent was voluntary. Appealed Order at 3. The trial court further found that Father “knowingly and voluntarily” consented to the termination of his parental rights. The evidence in support of the judgment shows that Mother’s attorney testified that she read the advisement informing Father that his consent was permanent and could not be revoked unless it was obtained by fraud or duress, or unless he was incompetent, that she told the Parents they could not take back their consent, and that she made sure that they understood that their signature on the form was irrevocable. Tr. Vol. 2 at 79-80. Father testified that Mother’s attorney read the form to him, discussed the meaning of the provisions, and answered his questions. *Id.* at 46. Father also testified that no fraud occurred to induce him to sign the form, that no one forced him to sign it, and that he was competent when he signed it. *Id.* at 46-47, 58.

[21] As for Father’s allegation that he was badgered into signing the form, the trial court found it was not credible. Both Mother’s attorney and the FCM testified that they did not witness any badgering. Father acknowledged that there was no badgering at the bank when he signed the consent. *Id.* at 49. The video from the bank was admitted into evidence, and the trial court found that it did not depict any badgering. All this evidence supports the trial court’s finding that Father voluntarily consented to the termination of his parental rights. Father’s argument on appeal amounts to a request for us to reweigh the evidence and judge witness credibility, which we must decline. Accordingly, we affirm the order terminating Father’s parental rights.

[22] Affirmed.

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