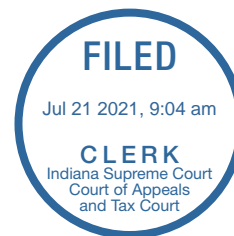


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Renee M. Ortega
Lake County Juvenile Public Defender's
Office
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika Prekopa Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent–Child Relationship
of J.H. and N.H. (Minor
Children)

and

K.H. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,

July 21, 2021

Court of Appeals Case No.
21A-JT-326

Appeal from the Lake Superior
Court

The Honorable Thomas Stefaniak,
Jr., Judge

Trial Court Cause Nos.
45D06-2008-JT-112
45D06-2008-JT-113

Appellee-Petitioner.

Bradford, Chief Judge.

Case Summary

[1] K.H. (“Father”) and A.W. (“Mother”) (collectively, “Parents”) are the parents of J.H. and N.H. (collectively, the “Children”). The Department of Child Services (“DCS”) first became involved with Parents and J.H. in 2014, after receiving reports of drug use by Parents and the family’s unsanitary living conditions. DCS again became involved with the family when N.H. tested positive for drugs at birth. DCS filed a petition alleging that Children were children in need of services (“CHINS”). Children were removed from Parents’ care and were subsequently determined to be CHINS. Parents were ordered to complete certain services but failed to successfully do so. Given Parents’ failure to successfully complete services, DCS eventually petitioned to terminate their parental rights to Children. 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.¹ We affirm.

Facts and Procedural History

- [2] J.H. was born to Parents on October 18, 2013. On December 11, 2014, DCS filed a petition alleging that J.H. was a CHINS because of drug use by Parents and the allegedly filthy conditions of the hotel room in which the family was staying. J.H. was removed from Parents' care and, on January 21, 2015, determined to be a CHINS. Parents were ordered to complete certain services. J.H. was eventually returned to Parents' care.
- [3] N.H. was born to Parents on July 7, 2018. On July 18, 2018, DCS received a report alleging that Children were victims of neglect. Specifically, it was reported that N.H. was a drug-exposed infant and that J.H. was "a victim of environment, life, health endangerment due to concerns of drug use." Tr. Vol. II p. 12. Family Case Manager ("FCM") supervisor Melissa Lara saw N.H. at the hospital, where he was going through withdrawal symptoms, and medication was required to stabilize him. N.H. remained at the hospital for three weeks following his birth.
- [4] On August 28, 2018, DCS filed a petition alleging that Children were CHINS. Two days later, DCS removed Children from Parents care. On September 26,

¹ Mother does not participate in this appeal.

2018, the juvenile court adjudicated Children to be CHINS. The juvenile court entered a combined dispositional and parental participation order on September 27, 2018, with a plan of reunification. On August 5, 2020, the juvenile court approved a concurrent plan of termination and adoption.

- [5] On July 20, 2020, DCS filed a petition to terminate Parents' parental rights. The juvenile court subsequently dismissed the petition, and DCS filed a second termination petition on August 6, 2020. Following a factfinding hearing, the juvenile court entered an order terminating Father's parental rights to Children.

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. Office of Family & Children*, 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 his 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 sustain the termination of his parental rights to Children. In order to support the termination of Father’s parental rights to Children, DCS was required to prove, *inter alia*, the following:

(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[ren].

Ind. Code § 31-35-2-4(b)(2). Father claims that DCS failed to present sufficient evidence to establish the statutory requirements by clear and convincing evidence.

A. Indiana Code Section 31-35-2-4(b)(2)(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 above-mentioned 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, either of 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. In this case, DCS had to prove either that (1) the conditions resulting in removal from or continued placement outside Father's home will not be remedied or (2) the continuation of the parent-child relationship poses a threat to Children.

[11] The juvenile court determined that the evidence established a reasonable probability that the conditions that resulted in Children's removal from and

continued placement outside Father’s care would not be remedied. When making a determination as to whether the conditions leading to placement outside a parent’s care are likely to be remedied, juvenile courts “should judge a parent’s fitness at the time of the termination hearing, considering any change in conditions since the removal.” *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007). “The trial court can also consider the parent’s response to the services offered through the DCS.” *Id.* “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.” *Id.* (quoting *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*).

[12] In claiming that the evidence is insufficient to prove that the conditions that resulted in Children’s removal from his care are unlikely to be remedied, Father asserts that “[t]here was no evidence presented that [he] ingested drugs in front of his children or appeared intoxicated at any time in front of the children.” Appellant’s Br. p. 9. Father additionally asserts that “DCS presents no evidence as to how [he] has not remedied the conditions that led to the removal of J.H. or N.H.” Appellant’s Br. p. 9. Father acknowledges that he did have a period of homelessness but claims that he has since maintained both housing and employment.

[13] Contrary to Father’s assertions, the juvenile court’s unchallenged findings and the evidence presented during the factfinding hearing support the juvenile

court's determination that the conditions leading to removal from Father's care will not be remedied. With regard to Father's failure to remedy the conditions leading to Children's removal, the juvenile court found as follows:

The parents have a history of housing instability throughout the CHINS case. The parents were homeless from April 2019 through December of 2019. The parents lost their rental assistance in October 2020, therefore their instability continues. Father reports that he is employed, but would not show proof of adequate employment....

Parents are not compliant with the case plan for reunification. Parents did not complete any of the assessments or the therapy. Parents are not in compliance with the homebased casework services....

Parents are inconsistent with the drug screens. Father was scheduled for 81 screens in 2020, but only submitted to 7....

Mother and Father continue to test positive on their drug screens when they submit to the screens. Parents are not compliant with submitting to the screens. Parents tested positive for cocaine and suboxone as recently as December of 2020. Parents admitted to using cocaine due to stress. Parents indicate they plan to wean themselves off of suboxone, but never follow through. Parents have not lowered their suboxone levels throughout the CHINS cases which began in 2018....

Parents are inconsistent with the visitations with the children. The children act out after visitations with the parents and are being provided therapy. [J.H.] has been diagnosed with PTSD, and experiences night tremors before visiting parents. The past trauma is being fully addressed in the foster placement.

Neither parent has completed the services for reunification.

Parents indicate that the services are not necessary. Neither parent has remedied their substance abuse issues.

Neither parent is providing any emotional or financial support for the children. Parents have not completed any case plan for reunification. Neither parent is in a position to properly parent these children.

The children remain outside of the parents' care. The original allegations of neglect have not been remedied by the parents. The Court finds that the children were removed on August 30, 2018 and the conditions have not been remedied by either parent. Parents have not overcome their substance abuse issues in order to properly and safely parent their children. Parents have not demonstrated an ability to independently parent the children and provide the necessary care, support and supervision. There is no basis for assuming the parents will complete the necessary services and find one or both of themselves in a position to receive the children into the home. Parents failed to utilize the available services and make the necessary efforts to remedy the conditions, which led to intervention by DCS and the Court.

Appellant's App. Vol. II pp. 51–52. Father does not challenge any of the above-quoted findings on appeal.

[14] The juvenile court's findings are also supported by the record. For instance, while the record reveals that while Father completed at least part of a substance-abuse assessment on September 5, 2018, he did not successfully complete the recommended therapy or the required clinical assessment, parenting assessment, or medical evaluation. Father blamed his failure to complete services on his allegedly chaotic work schedule. Father was also inconsistent with visitation and failed to comply with a plan to lower his

reliance on suboxone. Father admitted that he and Mother had suffered periods of homelessness but claimed that they had remedied the issue and obtained stable housing. He also claimed to have obtained stable employment but failed to provide the juvenile court with any verification of his claimed employment.

[15] Father also failed to consistently appear for court-ordered drug screens. In 2019, Father completed only twenty-one of fifty-two ordered drug screens. In 2020, Father completed only seven of eighty-one ordered drug screens. Father also tested positive for cocaine at least three times in 2020. At the factfinding hearing, Father admitted that he had recently used cocaine. He also admitted that he had abused alcohol during the CHINS and termination proceedings.

[16] The juvenile court's findings together with the evidence presented during the factfinding hearing demonstrates that Father has not obtained sobriety. As such, we conclude that the evidence supports the juvenile court's conclusion that there is a reasonable probability that the conditions that resulted in Children's removal from Father's care would not be remedied. Father's claim to the contrary amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

B. Indiana Code Section 31-35-2-4(b)(2)(C)

[17] We are mindful that in considering whether termination of parental rights is in the best interests of the children, the juvenile court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v.*

Monroe Cnty. Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* “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 the best interests of the children.” *Lang*, 861 N.E.2d at 373. Furthermore, this court has previously determined that the testimony of the case worker, GAL, or a CASA regarding the children’s best interests supports a finding that termination is in the children’s best interests. *Id.* at 374; *see also Matter of M.B.*, 666 N.E.2d 73, 79 (Ind. Ct. App. 1996), *trans. denied*.

[18] The juvenile court found that “[i]t is in the best interest of the children and health, welfare and future that the parent-child relationship between the children and parents be forever fully and absolutely terminated.” Appellant’s App. Vol. II p. 52. This finding is supported by the testimony of FCM Curtis Lewis who testified that he believed that it was in Children’s best interests to terminate Father’s parental rights. Specifically, he testified that

DCS originally intervened with the parents due to [N.H.] being born positive for Buprenorphine. They’re still using the same amount of Suboxone as when we started the case. [Mother] did give birth to another child who was also born drug exposed. They have not completed any of their case plans, their goals and they just showed an inability to be consistent with their services.

Tr. Vol. II p. 35. In addition, J.H.’s therapist, Cassandra Kormendy, testified that she could not support reunification with Father “[b]ecause of [J.H.’s]

mental health status” at the time of the factfinding hearing and could not say whether J.H. would ever recover from the trauma inflicted by Parents. Tr. Vol. II p. 114. Considering FCM Lewis’s testimony regarding Children’s best interests together with Kormendy’s testimony and the evidence regarding Father’s failure to successfully complete services or remedy the reasons for Children’s removal from his care, we conclude that the juvenile court’s determination that termination of Father’s parental rights is in Children’s best interests is supported by sufficient evidence. Father’s claim to the contrary again amounts to nothing more than an invitation for this court to reweigh the evidence, which we will not do. *See In re S.P.H.*, 806 N.E.2d at 879.

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

Crone, J., and Brown, J., concur.