

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re: The Termination of the
Parent-Child Relationship of:
Na.R. (Minor Child) and
N.R. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

June 1, 2023

Court of Appeals Case No.
22A-JT-2539

Appeal from the Floyd Circuit
Court

The Honorable J. Terrence Cody,
Judge

Trial Court Cause No.
22C01-2108-JT-477

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

- [1] N.R. (“Father”) appeals the involuntary termination of his parental rights to his daughter, Na.R. (“Child”). He argues the trial court’s findings do not support its conclusions that the conditions under which Child was removed from his care would not be remedied and that continuation of the Father-Child relationship would threaten Child’s well-being. We affirm.

Facts and Procedural History

- [2] Child was born to S.H. (“Mother”)¹ and Father on January 26, 2010. On March 14, 2019, the Department of Child Services (“DCS”) received a report alleging Child’s sibling, L.H. (“Sibling”), had eleven unexcused absences from school. Additionally, when DCS went to Mother’s home to investigate, DCS noticed “the house was very dirty, not in conditions of [sic] a child to be living there, a lot of empty alcohol bottles[.]” (Tr. Vol. II at 223.) During subsequent interviews, DCS noticed Mother seemed intoxicated. Mother tested positive for cocaine and alcohol. Child and Sibling continued to live with Mother, who agreed to a safety plan.

- [3] Regarding Father, Child told DCS:

[T]he last time [Father] took her and [Sibling] for the day, he almost drove off the Sherman Minton Bridge because he was

¹ Mother’s parental rights to Child were also terminated, and we affirmed the termination of her rights in a separate appeal. See *S.H. v. Indiana Department of Child Services*, 22A-JT-2918 (Ind. Ct. App. May 23, 2023).

drunk. [Child] also told [Family Case Manager Martinique Coffey] that she knew that [Father] was drunk because she saw a half empty bottle of E and J Brandy on the floor of the passenger side of the vehicle. [Child and Sibling] told FCM Coffey that [Father] was “swerving all over the rode [sic]” [Child] told FCM Coffey that she was scared and, she told [Sibling], “we are gonna die today.” [Child and Sibling] denied that [Father] hit anything with the car during the incident. [Child] told FCM Coffey that [Father] “got sober” and then drove [Child and Sibling] to their maternal grandmother’s home in Louisville.

(Ex. Vol. I at 40.) On June 13, 2019, DCS interviewed Father. He told Family Case Manager (“FCM”) Martinique Coffey that he was Child’s Father but did not pay child support at that time. He told FCM Coffey that Child was last in his care a “few weeks ago.” (*Id.*) Father reported he “has had issues with alcohol since he got out of prison approximately three years ago.” (*Id.*) He told FCM Coffey he “did not drive intoxicated with [Child and Sibling] in the car[,]” (*id.*), and he believed “[Child and Sibling] were coached to provide that story to DCS.” (*Id.*)

[4] Based on Mother’s inability to stay sober and abide by Child’s safety plan, Child and Sibling were removed from Mother’s home on June 20, 2019, and placed in foster care. Child was not placed with Father because Father had not established paternity at the time, DCS could not consistently contact him, and “there [was] no way . . . [to] see if that was a safe situation.” (Tr. Vol. III at 52.) However, DCS referred Father to a service to provide supervised visitation between him and Child.

[5] On June 24, 2019, DCS filed a petition alleging Child was a Child in Need of Services (“CHINS”) based on Mother’s alcohol use. Father was a party to this petition, but DCS did not allege any facts related to Father that resulted in the removal of Child from Mother’s care. On July 23, 2019, Mother admitted Child was a CHINS. Father did not appear at the July 23 hearing because “he was not returning phone calls[,]” (Tr. Vol. II at 225), and DCS was “not able to locate him at his home.” (*Id.* at 225-26.)

[6] In June 2020, DCS sent a referral to re-establish² visitation with Child, but Father was ultimately discharged from visitation because his attendance was inconsistent. In December 2020, police arrested Father for Class A misdemeanor criminal trespass,³ Class B misdemeanor public intoxication,⁴ and Class B misdemeanor disorderly conduct⁵ based on an incident involving Mother. On January 20, 2021, Father pled guilty to Class A misdemeanor criminal trespass in the December 2020 case.

[7] On December 29, 2020, the trial court held its initial CHINS hearing as to Father. On January 21, 2021, the trial court held a pre-trial hearing, and Father did not appear. On January 26, 2021, the trial court held a fact-finding

² Father’s earlier referral was closed due to inconsistent visitation.

³ Ind. Code § 35-43-2-2(b)(1).

⁴ Ind. Code § 7.1-5-1-3(a)(3).

⁵ Ind. Code § 35-45-1-3(a)(2).

hearing in the CHINS case, and Father did not appear. In its order⁶ the trial court found:

- 1) Father stated at the Initial Hearing that he was [Child's] father.
- 2) Father has not participated in or been a part of [Child's] life since [Child's] removal.
- 3) Father is the non-custodial parent and is not in a position to provide for [Child's] care or custody.
- 4) Father ha[s] made no effort since [Child's] removal to address [Child's] needs or establish paternity.

(Ex. Vol. I at 80-1.) Based thereon, the trial court adjudicated Child as a CHINS as to Father.

[8] On February 18, 2021, the trial court held a dispositional hearing as to Father. FCM Keller reported to the trial court that Father “didn’t give much of a reason for his absence, stating that ‘mail was going to the wrong house[.]’” (Tr. Vol. II at 228.) On April 26, 2021, the trial court entered an order⁷ requiring Father to, among other things, maintain contact with DCS; complete any programs DCS

⁶ For reasons unclear from the record, the order adjudicating Child as a CHINS as to Father is dated April 26, 2021, even though the order set a “Modification Hearing” for February 18, 2021. (Ex. Vol. I at 81) (original formatting omitted). The trial court held a dispositional hearing on February 18, 2021.

⁷ The trial court’s dispositional order as to Mother included requirements for Father. The requirements for Father in the order of April 26, 2021, are virtually identical.

recommends; refrain from the use of illegal substances; obey the law; complete parenting and substance abuse assessments and participate in all services stemming therefrom; submit to random drug screens; complete a clinical assessment and follow all recommendations; obtain and maintain a stable source of employment; obtain and maintain a residence appropriate for Child; and visit with Child.

[9] Father completed a parenting assessment as required, and from that assessment he was referred to Fatherhood Engagement. While he did participate in Fatherhood Engagement for over a year, he eventually stopped attending and did not complete the service. Father also did not complete a substance abuse assessment “because it was [scheduled] on a Sunday” and he “didn’t want to sit in the cold at the bus stop.” (Tr. Vol. II at 155, 157.) Father “doesn’t see that there’s a problem” with substance abuse. (*Id.* at 246.) However, Father called FCM Keller a few times and had “slurred speech, confusion, didn’t know what day it – it – was . . . [and] at one point, it sounded like he passed out on the phone.” (*Id.* at 246-7.)

[10] In June 2021, DCS referred Father to a service provider for supervised visitation with Child. The service provider put Father’s visits on hold because he had “missed several in a row . . . either four or five consistent [sic] visits.” (*Id.* at 250.) On June 15, 2021, the trial court changed Child’s permanency plan to adoption based on Father’s noncompliance with services and problems with inconsistent visitation. On August 3, 2021, DCS filed a petition to terminate

Father's parental rights to Child based on the same reasons supporting the change in Child's permanency plan.

- [11] In December 2021, Father began supervised visitation with Child; Court Appointed Special Advocate ("CASA") Courtney Roberts facilitated those visits. CASA Roberts recommended Father and Child attend therapeutic visits because the visits "were not going very well." (*Id.*) Father and Child began participating in therapeutic visits in February 2022. These visits were virtual, and Father was often "late getting onto a visit, or he wouldn't log in at all." (*Id.* at 94.) Child told Andrea Pitcher, who facilitated the therapeutic visits, that "she did not want to have contact" with Father because "he drank a lot of alcohol and . . . he did bad things." (*Id.*)
- [12] During a virtual visit with Child on July 11, 2022, Father became agitated when Child asked her foster parents for information about her school and where she spent the Fourth of July holiday with her foster parents. Father said he felt "that [foster parents] were coaching [Child] on what to say." (*Id.* at 100.) Father's voice became louder and Child "told him he needed to calm down[.]" (*Id.*) Pitcher terminated the Zoom call because Father "continued to elevate his voice." (*Id.*) After that visit, Pitcher, FCM Keller, and CASA Roberts attempted to schedule a Child and Family Team Meeting ("CFTM") to discuss supervised visitation policies. Father refused to respond to these requests. Father last saw Child on July 11, 2022.

[13] On August 18-19, 2022, the trial court held fact-finding hearings on the termination petition. During the hearing, FCM Keller outlined Father’s involvement in Child’s case and told the court he believed termination of Father’s parental rights was in Child’s best interests because “the parents have still not showed [sic] that they have what it takes, or they are even willing to even make efforts to fix what . . . led to removal in the openings of the CHINS case.” (Tr. Vol. III at 14.) On September 27, 2022, the trial court entered its order terminating Father’s parental rights to Child.

Discussion and Decision

[14] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile 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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied* 534 U.S. 1161 (2002).

[15] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however,

when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[16] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (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.
 - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
 - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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 provide clear and convincing proof of these allegations at the termination hearing. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

- [17] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

- [18] Father argues the trial court’s conclusion that the conditions under which Child was removed from his care would not be remedied is not supported by the trial

court's findings. The trial court must judge a parent's fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent's pattern of unwillingness or lack of commitment to address parenting issues and to cooperate with services "demonstrates the requisite reasonable probability" that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*.

[19] The trial court made multiple findings regarding Father:

11. Father did not appear for a court hearing until an Initial Hearing was held for him on December 29, 2020. He appeared in custody of the Floyd County Jail.

12. A Pretrial Conference was held for Father on January 21, 2021. Father did not appear despite the Court attempting to call him twice.

13. A Fact Finding Hearing was held for Father on January 26, 2021. Father did not appear and the Court continued Child's adjudication as to Father.

* * * * *

59. Father was referred for supervised visitation after removal. He was inconsistent in this service and did not stay in contact with DCS. He was re-referred for therapeutic virtual supervised visitation in June 2020. However, he was not consistent in his attendance and the service was discharged by the provider due to noncompliance.

60. Other than supervised visitation Father was largely absent from the case until December 2020 when he was arrested in Floyd County, Indiana. He had not appeared in court until this time.

61. After Father's first appearance in Court FCM Keller and CASA Roberts met with him to discuss how to progress in the case. He was then referred for supervised visitation, a parenting assessment, and a substance abuse assessment.

62. Father completed the parenting assessment in May of 2021 and was recommended for Fatherhood Engagement. Father was referred to this service in July 2021 and participated consistently until May of 2022 when he stopped participating completely.

63. Father was referred for a substance abuse assessment in April 2021. He has never completed this assessment.

64. Father never provided documentation of completion of any substance abuse related service done outside of a DCS referral.

65. Father was inconsistent in attending supervised visitation sessions prior to his incarceration in Floyd County. After he was arrested and subsequently released, more visitation referrals were put in place. He was inconsistent in attending these visits.

66. A plan was put into place in December 2021 where CASA Roberts would supervise visits because of difficulties finding a provider with availability.

67. CASA Roberts supervised the visits for approximately two months but noticed significant issues in the bond between Father and Child, so she recommended the visits be therapeutically supported.

68. Father was referred for therapeutically supervised visitation with Ireland Home Based Services in February 2022. These visits were to be virtual due to the lack of bond between Father and Child and since Child was placed a significant distance away from Father's home.

69. Andrea Pitcher received the referral and began supervising visitation between Father and Child on February 7, 2022.

70. At a CFTM in March 2022, Andrea explained to Father that visitation could progress to in person if he was consistent in attendance and if strides were made in developing the bond.

71. Father was required to confirm his visits by phone call or text message because of his history of noncompliance with visitation.

72. Father was not consistent in attending visitation. He frequently would either miss his call-ahead, or call-ahead but then not log onto the visit, or he would be unable to figure out how to log onto the Zoom call.

73. Ms. Pitcher observed substantial damage to the bond between Father and Child. Child did not want to visit with Father and voiced this opinion frequently. She often would not engage in his attempts to speak with her and did not appear to be comfortable with him.

74. Father was regularly unable to provide Child with age-appropriate conversation or activities.

75. The last visits took place on July 11, 2022. According to Ms. Pitcher, Father became very upset during this visit and accused Child's placement of coaching her. He got very agitated and

raised his voice to the point where Child was attempting to calm him down. Due to his escalation, Ms. Pitcher ended the visit.

76. After the visit on July 11, FCM Keller, CASA Roberts, and Ms. Pitcher agreed that a CFTM was necessary before another visit occurred to discuss what happened and the expectations and policies of supervised visitation. In a group text message with all parties included, a CFTM was proposed and Father was asked to submit availabilities. He never participated in this conversation and the CFTM was never held. As such, Father has not visited since July 11, 2022.

77. Father's inconsistent visitation significantly affected the bond between himself and Child, to the point that at this time it is unlikely to be repaired.

78. Father never submitted to DNA testing to establish paternity.

79. Neither FCM Keller nor CASA Roberts was ever able to recommend unsupervised visitation for Father.

80. Father has not remedied the reasons for Child's removal from him and her continued placement outside of his home. Father has been given significant opportunities to show he can be an able, steady, and safe presence in [Child's] life; however, he has not taken advantage of those opportunities. He has not shown that he can provide Child with the home environment she requires.

* * * * *

82. Child was never returned to the care and custody of any parent during the pendency of the CHINS case.

(App. Vol. II at 15, 26-9.) Father does not challenge any of the trial court's findings. Instead, he argues the trial court's findings do not support its conclusion that the conditions under which Child was removed from Father's care would not be remedied because none of those findings "support that any substance abuse issues by Father placed [Child] at risk." (Br. of Appellant at 12.)

[20] However, the trial court found Father did not complete a substance abuse assessment, so there was no avenue by which the trial court could determine whether Father's substance abuse issues affected his ability to parent Child. Additionally, the trial court made a number of other findings to support the termination of Father's parental rights, including his noncompliance with Fatherhood Engagement and his difficulties participating in supervised visitation with Child. Based thereon, we conclude the trial court's findings supported its conclusion that the conditions under which Child was removed from Father's care would not be remedied.⁸ See *In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (mother's pattern of noncompliance and inability to benefit from services during the CHINS and termination proceedings supported

⁸ Father also argues the trial court's findings do not support its conclusion that the continuation of the Father-Child relationship poses a danger to Child's well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code Section 31-35-2-4(b)(2)(B). See, e.g., *In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code Section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied*.

the trial court's conclusion that the conditions under which her children were removed from her care would not be remedied), *reh'g denied, trans. denied*.

Conclusion

[21] The trial court's findings support its conclusion that the conditions under which Child was removed from Father's care would not be remedied. Accordingly, we affirm the termination of Father's parental rights to Child.

[22] Affirmed.

Altice, C.J., and Foley, J., concur.