MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: A.P., J.P., M.P., and L.P. (Minor Children), and B.P. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

November 14, 2022

Court of Appeals Case No. 22A-JT-1556

Appeal from the Adams Circuit Court

The Honorable Chad Kukelhan, Judge

Trial Court Cause Nos.
01C01-2201-JT-1
01C01-2201-JT-2
01C01-2201-JT-3
01C01-2201-JT-4

Brown, Judge.

[1] B.P. ("Father") appeals the involuntary termination of his parental rights to his children, A.P., J.P., M.P., and L.P. We affirm.

Facts and Procedural History

[2] Father and T.P. ("Mother," and together with Father, "Parents") are the parents of A.P., born in 2011, J.P., born in 2013, M.P., born in 2016, and L.P., born in 2019. In September 2018, A.P., J.P., and M.P. were removed from Father's care and found to be children in need of services ("CHINS"). At that time, Father was using methamphetamine, and the children were removed from his care for eleven months.

[3] In August 2020, Father was using fentanyl daily. On December 4, 2020, DCS alleged that the children were CHINS, Mother had relapsed and left Indiana, Mother reported that her mental health was not stable, Father was using illegal drugs, and there were concerns that utilities to the home had been disconnected. That same day, the court signed an Emergency Custody Order and removed the children from Father's care.

[4] On December 17, 2021, Father admitted that the children were CHINS. On January 5, 2021, Mother admitted that court intervention was necessary to ensure the safety and well-being of the children. On January 21, 2021, the court entered a dispositional order requiring Father to keep all appointments with service providers, maintain suitable housing, secure a stable source of income, refrain from using illegal substances, complete substance abuse and parenting assessments, and submit to random drug screens.

[5] On January 5, 2022, DCS filed petitions for the involuntary termination of the parent-child relationship between Parents and the children. On April 25, 2022, the court held a hearing. DCS presented the testimony of Father, Family Case Manager Nicole Harrington ("FCM Harrington"), DCS Service Manager Carolyn Darrow, the children's grandmother, Family Case Manager Shonna Leas ("FCM Leas"), and Guardian ad litem Megan Close ("GAL Close"). Father acknowledged that he had been charged with possession of a syringe, possession of a legend drug, possession of methamphetamine, possession of a narcotic drug, possession of marijuana, possession of paraphernalia, operating a vehicle while intoxicated, and operating a vehicle with a controlled substance in his system. When asked if he pled guilty to some of those counts, Father answered: "Yes ma'am. I pled guilty to possession of a syringe, possession of methamphetamine, and maybe something else. I don't remember. I think it was a misdemeanor. The driving one too." Transcript Volume II at 24. The court admitted a chronological case summary of the criminal case which indicates that a change of plea hearing was held on March 9, 2022. During the cross-examination of Father, he testified that he was a functioning drug user at the time he used fentanyl and had been clean since March 9, 2022.

[6] On June 6, 2022, the court entered an order terminating Parents' parental rights. The court found that there was a reasonable probability that the conditions that resulted in the children's removal or the continued placement outside the home would not be remedied and that termination was in the best interests of the children.

Discussion

[7] The issue is whether the trial court erred in terminating Father's parental rights. Father argues the termination order should be reversed because governmental interference in the parent-child relationship was never warranted. He asserts that procedural errors by DCS deprived him of due process. He contends there was no evidence that the children were ever seriously harmed or endangered as a result of his drug use. He asserts that he had made substantial progress with his substance abuse treatment and had been sober for forty-seven days at the time of the termination hearing and DCS did not prove that termination was in the children's best interests. DCS argues that the CHINS adjudication is res judicata and the trial court's judgment is not clearly erroneous.

[8] To the extent Father argues the initial governmental interference was not required, even assuming that res judicata does not apply, we cannot say that reversal is warranted. In a January 5, 2021 order in the underlying CHINS actions, the court indicated that a hearing was held on December 17, 2020,[1] and it found that Father admitted that "the family had a prior CHINS case with concerns for illegal drug use and home conditions," "Mother is currently transient between Indiana and Illinois and does not have stable housing," "Father submitted to a drug screen on November 17, 2020 that was positive for cocaine and benzoylecgonine," he "submitted to a drug screen on November

[1] The record does not contain a transcript of this hearing.

25, 2020 that was positive for fentanyl and amphetamine," he "submitted to a drug screen on November 30, 2020 that was positive for fentanyl," "the family received a disconnect notice of their electricity on December 1, 2020," and "the intervention of the Court is necessary to ensure the safety and wellbeing of the children." Exhibits Volume I at 67. Under these circumstances and in light of Father's admissions regarding Mother's lack of stable housing, his positive drug screens, and the electricity disconnect notice, we cannot say that DCS's initial involvement was unwarranted or deprived Father of any due process in the termination proceeding.

[9] In order to terminate a parent-child relationship, DCS is required to allege and prove, among other things:

> (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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[10] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment. *Id*. We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id*. "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence." *Id*. at 640.

[11] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of

future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *Id.* Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances the problematic situation will not improve. *Id.*

[12] To the extent Father does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[13] The record reveals that, at the April 25, 2022 hearing, Father indicated he used methamphetamine since leaving Hope House and acknowledged that he tested positive for fentanyl in February 2022. He asserted that his last day of use was in March and he went to a methadone clinic on March 14th. When asked if it

was fair to say he was "pretty inconsistent throughout with visitation" when he was on drugs, Father answered affirmatively. Transcript Volume II at 35. He also testified that he was not participating in any parenting classes.

[14] FCM Harrington testified that Father had submitted to three oral drug screens through the life of the assessment and all of them returned positive. She testified that the home conditions were "a little concerning" and that Father admitted that his electricity had been scheduled to be disconnected. *Id.* at 50. During redirect examination, FCM Harrington testified that Father was responsible for the children's care "24/7" and that "[d]ue to the substances that [Father] tested positive for, there was a concern for his ability to parent the children . . . ." *Id.* at 52-53. She also testified that there was a concern with fentanyl being used in the home "because of its potential to be deadly and the children having access to it." *Id.* at 53.

[15] Darrow, the DCS Service Manager employed at the Otis R. Bowen Center in Huntington County, testified that Father was referred for a substance abuse assessment, regular counseling services, substance use outpatient services, and therapeutic visits. She testified that Father was in "complete compliance with all appointments in April," but detailed Father's prior lack of progress. *Id.* at 62. Specifically, she stated that Father "no showed" for a scheduled intake in October 2021, attended "a care planning appointment" the following day, and was a "no show" for an intake appointment in November 2021. *Id.* at 60-61. She indicated that the Fort Wayne office reached out to him multiple times in December 2021 but was unsuccessful in contacting him, Father was contacted

in January, an appointment was scheduled, and Father "no showed." *Id.* at 61. She stated that Father attended an intake assessment on February 1st, canceled an individual therapy appointment that month, and completed one individual session in March 2022 and that "[t]here was one no show for an individual session in March and then there were eight no shows for substance use groups in March, four for Matrix group, and four for MRT." *Id.*

[16] FCM Leas testified that she had been the family case manager for the children since January 2021. When asked to describe Father's compliance during the life of the case, she answered that Father had not "really complied at all except for recently when he went and did his substance abuse assessment in February of this year." *Id.* at 83. She indicated Father had a period of compliance when he was at the Tara Treatment Center "but he did not do substance abuse assessments through Park Center or Bowen until February of this year." *Id.* She testified that she reminded Father of what services he needed to do after his stay at Hope House, he said he knew he had to do those and would start doing them, and she did not see improved compliance at that time. She indicated that Father had a substance abuse assessment in February 2022 "but he didn't really start complying until March when he started doing classes" and "that's at the same time that he had plead guilty in the criminal matter." *Id.* at 85. She testified that it was accurate that Father did not start engaging regularly in the classes until April. She stated that Father did not comply with individual counseling and parenting services until February 2022 when he started with the Bowen Center. When asked about her concerns regarding Father's drug

screens, she answered: "[T]he on-going use of methamphetamines, amphetamines, . . . the quantities were extremely large, like over a thousand at some point but I think there were some that were like way higher than that and then fentanyl. Then I think there was a time that he tested positive for cocaine as well." *Id.* at 86. She testified that she screened him for drugs on February 18, 2022, Father told her he had not used anything for a week or two, and the screen resulted in a positive test. She also indicated the conditions that resulted in the removal of the children or the reasons for continued placement outside of the home had not been remedied because of Father's "continuous drug use throughout the life of the case and his most recent drug screen" on February 18, 2022, was positive for amphetamines and methamphetamines. *Id.* at 93. When asked about Father's recent sobriety and her concern, she answered:

> My concern is his relapse because he did Harbor Lights, you know, during the first case and I think he got out in July or something and was already, had already tested positive, you know, in October and then he went to Tara. Spent a month there last summer and then started using when he got out. Maybe not right when he got out but then he went to Hope House and then he started using when he was discharged from Hope House so just on-going drug use and relapse . . . .

Id.

[17] GAL Close testified: "At this point, I'm not certain that [Father] is going to remain sober in six weeks. Unfortunately, with his history, does not give me much faith in that . . . . We don't believe that anything has been remedied at this point." *Id.* at 97. When asked by Father's counsel why merely a change of

custody would not be in the children's best interests, GAL Close answered: "It's not a permanent change for these children and the behaviors by both [Father] and [Mother] have shown over two cases that they are not appropriate and not safe placements. At this point, they still have supervised parenting time and we're almost two years into the case." *Id.* at 98. She also stated "the children shouldn't have to wait any longer for their parents to get better," Father and Mother "had multiple changes, [sic] multiple years, multiple cases," and she did not see any reason "why we should put the children's benefit to the side to give the parents another bite of the apple when they've had multiple bites." *Id.* at 99. She also testified that Father "didn't start any services until four to six weeks before the termination trial." *Id.* at 100. When asked if either parent demonstrated an employment history where they could likely pay consistent child support, she answered in the negative.

[18] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in the children's removal and the reasons for placement outside Father's care will not be remedied.

[19] In determining the best interests of a child, the trial court is required to 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). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate

parental rights, 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 is in the children's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[20] FCM Leas testified that adoption by the children's grandmother and her husband would be in the children's best interests because they needed a sense of permanency or a stable home. GAL Close testified that termination of parental rights was in the best interests of the children. During questioning by Father's counsel about merely changing custody, GAL Close stated:

> That's not the permanency plan here today. Termination is and I still think that's the most appropriate based on the history. You know, we had, if this was the first case and, you know, [Father] had remained sober at the beginning of this case and . . . done the services he was supposed to do instead of coming in at the last hour, my opinion might be different but it doesn't change my opinion.

Transcript Volume II at 99. Based on the totality of the evidence, we conclude the trial court's determination that termination is in the children's best interests is supported by clear and convincing evidence.

[21] For the foregoing reasons, we affirm the trial court.

[22] Affirmed.

Altice, J., and Tavitas, J., concur.