

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
S.W. (Minor Child)

and

D.B. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 14, 2022

Court of Appeals Case No.
21A-JT-2783

Appeal from the Tippecanoe
Superior Court

The Honorable Bradley K. Mohler,
Special Judge

Trial Court Cause No.
79D03-2102-JT-18

Bradford, Chief Judge.

Case Summary

[1] S.W. (“Child”) was born to N.W.¹ (“Mother”) on April 24, 2015. D.B. (“Father”) is Child’s biological Father, but did not meet Child until much later. Mother also had another daughter, Sa.W. (“Sibling”), who is not Father’s biological child. The Department of Child Services (“DCS”) removed Child and Sibling from Mother’s care in March of 2017, filed a petition alleging that the two were children in need of services (“CHINS”), and eventually placed the two with a foster family. Despite efforts by DCS, Father did not meet Child or participate in DCS services until February of 2020. Eventually, the juvenile court granted the foster family’s request to move with Child and Sibling to Florida and terminated the parent-child relationship between Father and Child. Father argues that his due process rights were violated. Father also argues that the juvenile court erred in determining that the conditions which resulted in Child’s removal would not be remedied, the parent-child relationship was a threat to Child’s well-being, and it was in Child’s best interests that the parent-child relationship be terminated. We affirm.

Facts and Procedural History

¹ Mother’s parental rights were terminated as to Child and Sibling, but she does not participate in this appeal.

[2] DCS became involved with Mother in February of 2017, after receiving several reports of neglect. DCS removed Child and Sibling from Mother's care on March 16, 2017, following a fourth report of neglect. DCS filed a petition alleging that Child and Sibling were CHINS the next day.

[3] At the March 20, 2017, hearing, the juvenile court found that Father's whereabouts were unknown. On May 1, 2017, the juvenile court authorized DCS to serve Father by publication. The next day, the juvenile court adjudicated Child and Sibling to be CHINS.

[4] Despite multiple attempts, DCS was unable to locate Father until October of 2019. The juvenile court then ordered Father to establish paternity, participate in a clinical interview and to follow subsequent recommendations, participate in therapeutic parenting time, submit to random drug screens, and sign releases related to substance abuse treatment or complete a substance use assessment and follow all recommendations.

[5] On or about July 9, 2020, the permanency plan changed to termination and adoption. On July 28, 2021, the juvenile court authorized Child to move to Florida with her foster family. The juvenile court held a termination hearing and ultimately terminated Father's parental rights on November 15, 2021. In doing so, the juvenile court made, in relevant part, the following findings of fact:

5. That the Parents failed to comply with the terms of the Dispositional Order and failed to make significant and lasting progress toward the case goals [...] and the Father failed to fully

comply with services and failed to fully participate in services. In support thereof, the Court specifically notes:

a. Pursuant to the Progress Report filed on August 8, 2017, the Father had yet to establish contact with DCS or establish paternity and had not had any visits with the child.

[...]

q. Pursuant to the Progress Report filed on April 9, 2020, the Father contacted DCS and began engaging in services and visits. However, the Father did not provide requested information and did not cooperate with DCS and CASA.

[...]

s. Pursuant to the Progress Report – Permanency filed on June 24, 2020, the Father participated in supervised parenting time, drug screens, case management, and a mental health assessment.

[...]

u. Pursuant to the Progress Report filed on October 21, 2020, the Father participated in supervised parenting time, drug screens, and case management. However, the Father was twice discharged from home-based case management; his drug screens were suspended multiple times; and he failed to establish an appropriate residence.

v. Pursuant to the Progress Report - Permanency filed on February 16, 2021, the Father participated in supervised parenting time, drug screens, and case management. However, DCS noted that the Father had not yet made any progress in his services; was referred to a substance abuse assessment but had not completed it; and was referred to individual therapy but had not yet completed it.

[...]

w. [...] Father failed to appear at the hearing on February 8, 2021. The Court found that the Father had failed to comply with the Dispositional Decree; had been discharged from home-based case management twice; had his drug screens suspended; and had not found suitable housing.

[...]

y. Pursuant to the Progress Report filed on May 12, 2021, the Father completed a parenting assessment; completed a substance abuse assessment; and failed to begin [*sic*] individual home-based case management. The Father did submit to all of his drug screens.

[...]

z. [...] Father appeared at the hearing on May 26, 2021. The Court found that the Father had substantially complied with the Dispositional Decree, in that he was taking his drug screens; was participating in supervised parenting time; but still needed to complete an intake for Abuse Accountability and Awareness[...]. The Court authorized the Father to transition to semi-supervised parenting time.

aa. Judge [Faith] Graham conducted an *in camera* interview with [Child] prior to the review hearing in July 2021. Judge Graham determined that the Father had partially complied with the Dispositional Decree; had made little progress with services since 2019; had not yet participated in home-based case management; and had been discharged from 5 separate case managers. Finally, Judge Graham authorized [Child] to move to Florida with the foster parents.

6. That the foster father, J.C. testified that [Child] has been in his home and care for two periods, from January 31, 2018 through October 21, 2018; and then from the end of the trial home visit on April 17, 2019 to the current date. During those same periods, the foster parents have also kept [Sibling,] [Child]'s sister. He

described [Sibling] and [Child] as best friends. He is employed by Cosco [*sic*] as a Senior Manager, with plans to relocate to Florida for his employment. His wife is employed in social work. He advised that he and his wife want to adopt [Child]. He described [Sibling] and [Child] as best friends and [testified] that separating them would not be good. He believes that [Child] staying in their family (adoption) is in her best interests.

7. That Gerald Carter, a youth and family therapist with Connections, completed a clinical interview and assessment of the Father, noting criminal convictions for intimidation, public intoxication, and domestic violence; incarceration at DOC facilities in Westville, Miami County, and New Castle; a history of anger/aggression toward other people; and oppositional behaviors. He concluded that the Father would benefit from home-based case management and individual therapy.

8. That Steve Center, a home-based therapist for Family Interventions, completed a Parenting Assessment of the Father, noting a history of criminal incarcerations induced by drugs and alcohol and violence; a bond between Father and [Child]; and Father's desire to be a parent to [Child].

9. That Antonia Williams, a social worker for Ireland, provided therapy for [Child] and [Sibling], and noted that [Child] mentioned her foster father when speaking of her family; sometimes mentioned Father; had a strong bond with [Sibling]; would need therapy to deal with a separation from [Sibling]; and was excited about a move to Florida with her foster family and [Sibling].

10. That Daniel Center, a home-based case worker for Family Interventions, had 3 meetings with the Father in March/April 2021. He reported that the Father stopped participating and would not always respond to his assistance. He did not believe the Father recognized his issues; had not begun the recovery process; did not take responsibility for himself; and did not have a plan for the future. He did not believe the Father was living at his sister's house, as Father indicated. He reported the Father made no progress during his case management.

11. That Jazmin Morales, a visit supervisor for Ireland, supervised some of Father's visits with [Child]; noted she did not

see safety concerns for the visits; and noted that the visits went well. She also spoke to [Child] about a potential move to Florida with her foster parents, and [Child] told her that she preferred to move to Florida.

13. That Christine Ackerman, a home-based therapist with Ireland, worked with [Child] and [Sibling] from 2019 to 2021. She observed a strong bond between the sisters, as they comforted each other. She labeled the sisters as best friends and the only family they have known throughout their lives. While she noted that [Child] liked visiting with the Father, she recommended that [Child] remain with [Sibling]; that [Child] remain with her foster parents; and that [Child] be allowed to move to Florida.

15. That Lisa Bellamy, a home-based therapist with Take Back Control, completed a substance abuse assessment for the Father. She testified that her telephone call with the Father was not pleasant (hostile), to such an extent that she took an additional staff member with her to the assessment. The Father did complete the assessment.

16. That Laushana Landers-Smith, a home-based counselor with Hoosier Families, assisted with home-based case management for the Father, working on goals of parenting skills, using community resources, time management, and obtaining housing. She testified that the Father was pleasant to work with; was flexible with his schedule; and she had no safety concerns at his house.

17. That Leanne Rice, a home-based case manager with Dockside, was contracted to provide home-base case management for the Father. She testified that she tried to contact the Father to schedule sessions (calls/texts), but was unable to reach him or schedule. The Father was discharged on January 31, 2021 due to non-compliance.

18. That Harry Heyer, a MSW with Abuse Awareness & Accountability, conducted classes which the Father attended in Franklin. He reported that the Father attended classes; engaged in classes; and would have been almost finished with classes had he started on time.

[...]

20. That Lisa Vos, DCS Family Case Manager [(“FCM Vos”)], testified that [Child] has been a CHINS for 4+ years. She testified that [Child] is doing well in placement; is very bonded to her foster parents; and is very bonded to her sister, [Sibling]. She does not believe it would be in [Child]’s best interests to be separated from her sister. She reported that [Child] is now 6 years old, and for the last 4+ years, her bond with [Sibling] has been the most consistent part of her life.

As to the Father, she testified that from birth to age 4, he was in/out of jail and not involved in [Child]’s life. When he was located in October 2019, he had never met [Child]. He first met her in February 2020. He did not engage in the first parenting referral. She noted that the Father’s sister filed an eviction against him. She was ordered to personally see his residence before visits started, and it took 6 texts to get it scheduled. The Father was discharged from home-based case management on at least 4 occasions. The Father was discharged from therapy. The Father delayed starting Abuse Accountability for 3 months. She reported that communication with the Father was difficult, as he responded about 50% of the time. She did recognize that the Father and [Child] had developed a bond; that there were no safety concerns at the Father’s house; and that visits had moved from fully supervised to partially supervised. She reported that the Father was not fully engaged in the case until recently.

She testified that it was in [Child]’s best interests that the Father’s parental rights be terminated and that [Child] be adopted by her foster parents.

21. That Brenda Gochenour, [Court-Appointed Special Advocate (“CASA Gochenour”)] Staff Advocate, has been involved in the CHINS case since its start. She stated [Child] wants to move to Florida with her sister and foster parents. She felt that the Father was slow to engage in the case and only made progress after the TPR case was filed, noting that the Father had “not progressed to overnight parenting time or a trial home visit;” “had not been consistent in services;” and “had not been successful with home-based case management.” She testified that termination of Father’s parental rights was in [Child]’s best

interests” and that adoption was the appropriate plan for [Child].”

22. That Cheryl Wright, Father’s sister, testified that the Father lives with her. She evicted him in 2019 but allowed him to return in March 2021. She recognized that he has struggled in the past with alcohol, but notes good changes for him recently. She believes he is doing well with [Child].

23. That the Father, [D.B.], testified. He admitted to prior struggles with alcohol and a criminal history, often intertwined. At the time he was first notified by DCS of the case, he was renting one room in a house that was not appropriate for visits. Because of his felony convictions and credit history, renting a new place was difficult, so he has been living with his sister. He is currently participating in the Strong Fathers Workshop Class through Fathers & Families, with the provider reporting that he is actively engaged. He believes he has developed a bond with [Child] and strongly believes that a termination of his parental rights is not in [Child]’s best interests.

24. That [Child] has been removed from the care of the Mother and Father since March 16, 2017, a period of 53 months at the time of the hearing.

25. That the DCS’ permanency plan is for [Child] to be adopted by the current placement.

Appellant’s App. Vol. II pp. 22–37 (internal citations and footnotes omitted).

[6] Ultimately, the trial court ordered that the parent-child relationship between Father and Child be terminated. In doing so, the juvenile court concluded that “there exists no reasonable probability that the conditions will change” due to Father’s “pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions.” Appellant’s App. Vol. II p. 41. The juvenile court also concluded that due to Father’s “minimal and/or inconsistent effort to act as a parent[,]”

there was a “reasonable probability that the continuation of the parent-child relationship with the Father poses a threat to the well-being of [Child.]” Appellant’s App. Vol II p. 42. Lastly, the juvenile court concluded that it was in Child’s best interests that the parent-child relationship be terminated, referencing FCM Vos and CASA Gochenour’s testimony, as well as Child’s need for stability and consistency.

Discussion and Decision

- [7] “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.*
- [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. *In re T.F.*, 743 N.E.2d at 773.

“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.* Father does not challenge any of the juvenile court’s findings. The findings, therefore, “must be accepted as correct.” *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

I. Due Process

[9] Father argues that his due process rights were violated when the juvenile court allowed Child to move to Florida prior to the termination of his parental rights. This question is one of “fundamental fairness.” *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011). Indeed, while due process has never been defined, the phrase embodies a requirement of “fundamental fairness.” *Id.* (citations omitted). The fundamental fairness “requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

[10] The State notes, however, that because Father did not object to Child’s move to Florida during the proceedings below and argue that he has therefore waived that issue for appellate review. “[A] party on appeal may waive a constitutional claim, including a claimed violation of due process rights, by raising it for the first time on appeal.” *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016). The State also argues that Father has not attempted to save his due process claim from the effects of his waiver by arguing that the juvenile court’s action was fundamental

error. “[Fundamental error] review is extremely narrow and ‘available only when the record reveals a clearly blatant violation of basic and elementary principles, where the harm or potential for harm cannot be denied, and which violation is so prejudicial to the rights of the defendant as to make a fair trial impossible.’” *In the Matter of Eq.W*, 124 N.E.3d 1201, 1214–15 (Ind. 2019) (citing *Jewell v. State*, 887 N.E.2d 939, 942 (Ind. 2008)). Because Father neither objected to Child’s move below nor argued fundamental error on appeal, we conclude that Father has waived his due process claim. As such, we need not address it further.

II. Sufficiency of the Evidence

[11] Father also argues that the evidence is insufficient to support the juvenile court’s order terminating his parental rights to Child. In order to support the termination of Father’s parental rights to Child, DCS was required to prove the following:

- (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[...]
 - (iii) The child has been removed from the parent [...] for at least fifteen (15) months of the most recent twenty-two (22) months [...] as a result of the child being alleged to be a child in need of services [...]
- (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.

[...]

(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). In arguing that the juvenile court erred in terminating his parental rights, Father challenges the sufficiency of the evidence to support subsections (B) and (C).

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

[12] Father argues that the juvenile court erred in concluding that the conditions resulting in removal would not be remedied and that continuation of the parent-child relationship posed a risk to Child's well-being. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court need only to find that either the conditions resulting in removal would not be remedied or that continuation of the parent-child relationship posed a threat to Child's well-being. *See In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*.

[13] With respect to the conditions leading to Child's removal, Father argues that DCS failed to show that he was a deficient parent or that any alleged deficiency would not be remedied. The record reveals, however, that Father was not fully engaged in the case until just before the termination fact-finding hearing. Father failed to adequately communicate with DCS, his drug screens were

suspended multiple times, he failed to establish a suitable residence, and he was discharged from home-based case management on at least four occasions.

Father displayed a hostile attitude toward service providers and failed to participate in individual therapy sessions.

[14] Father argues that the juvenile court erred in concluding that he “failed to fully comply with services and failed to fully participate in services.” Appellant’s App. Vol. II p. 23. However, though Father had improved his participation in services by the time of the termination hearing, the record reveals that he had habitually failed to participate up until that point. While a juvenile court “must judge a parent’s fitness to care for [his] children at the time of the termination hearing and take into consideration evidence of changed conditions[,]” *In the Matter of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), the juvenile court must also “consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013) (quotation omitted). The juvenile court was justified in relying on Father’s habitual conduct in determining that the conditions resulting in Child’s removal would not be remedied.

[15] We conclude that the evidence supports the juvenile court’s conclusion that the conditions that resulted in Child’s removal were not likely to 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 879.²

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

[16] Father also argues that the juvenile court erred in finding that termination of his parental rights was in Child's best interests. We are mindful that, in determining what is in the best interests of the child, 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 child involved. *Id.* Furthermore, this court has previously determined that the testimony of an FCM, GAL, or a CASA regarding the children's best interests supports a finding that termination is in the children's best interests. *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 374 (Ind. Ct. App. 2007); *see also Matter of M.B.*, 666 N.E.2d 73, 79 (Ind. Ct. App. 1996), *trans. denied.*

[17] In this case, both FCM Vos and CASA Gochenour testified that termination was in Child's best interests. In testifying that termination of Father's parental rights was in Child's best interests, CASA Gochenour testified specifically

² Again, because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive and the juvenile court did not err by concluding that the conditions resulting in Child's removal would not be remedied, we need not address Father's other argument under this statute that that continuation of the parent-child relationship presents a threat to Child's well-being. *See In re C.C.*, 788 N.E.2d at 854., *trans. denied.*

noted that Child had been a CHINS for more than four years and that it would not be in Child's best interest to be separated from the only consistent person in her life, Sibling. FCM Vos testified that it was in Child's best interest that F's parental rights be terminated, and that Child be adopted by her foster parents. This evidence, standing alone, is likely sufficient to sustain the juvenile court's conclusion that termination was in Child's best interests.

[18] In challenging the juvenile court's conclusion that termination of Father's parental rights was in Child's best interests, however, Father argues that "the law is clear that the TPR court is not to even consider the best interest prong of the statute until 'unfitness' is proved." Appellant's Br. p. 21 (citing *In re G. Joseph*, 416 N.E.2d 857, 859 (Ind. Ct. App. 1981)). Father's argument is therefore reliant on us determining that the juvenile court erred in finding that the conditions which lead to Child's removal would not be remedied. However, because we have already determined that the juvenile court's conclusion in this regard was supported by the evidence, we reject Father's argument. Given the evidence indicating that the conditions resulting in removal were not likely to be remedied coupled with the testimony of FCM Vos and CASA Gochenour, we conclude that the evidence is sufficient to support the juvenile court's conclusion that termination of Father's parental rights was in Child's best interests. Furthermore, Father has failed to convince us that the juvenile court erred in valuing Child's and Sibling's relationship over the parent-child relationship when determining Child's best interests. Father's

argument on appeal is effectively a request that we reweigh the evidence, which again 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.

Najam, J., and Bailey, J., concur.