

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

D.D. (Minor Child),

And

D.L. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

August 31, 2023

Court of Appeals Case No.
23A-JT-672

Appeal from the Madison Circuit Court

The Honorable Stephen J. Koester,
Judge

The Honorable Grey Chandler,
Magistrate

Trial Court Cause No.
48C02-2209-JT-141

Memorandum Decision by Judge Riley.

Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Respondent, D.L. (Father), appeals the trial court's termination of his parental rights to the minor child, D.D. (Child).

[2] We affirm.

ISSUE

[3] Father presents this court with one issue on appeal, which we restate as:
Whether the Department of Child Services (DCS) presented clear and convincing evidence to support the trial court's termination of Father's parental rights to Child.

FACTS AND PROCEDURAL HISTORY

[4] Child was born to V.D. (Mother)¹ on January 30, 2020. That same day, DCS removed Child from Mother's care because he had been exposed to illegal substances prior to birth and continued to have problems relating to this in utero exposure. Mother informed DCS that Father was the biological parent of Child. On February 3, 2020, DCS filed its verified petition alleging Child was a

¹ Mother does not participate in these appellate proceedings. Facts pertaining to Mother will be included in as far as relevant to Father's appeal.

Child in Need of Services (CHINS), and the trial court adjudicated Child as a CHINS the following day.

- [5] During a dispositional hearing on February 27, 2020, the trial court ordered Father to maintain safe and stable housing, establish paternity, refrain from using illegal substances, complete a substance abuse assessment and follow its recommendations, submit to random drug screens, complete a domestic violence assessment, and participate in fatherhood programming. Father established paternity to Child on May 12, 2021.
- [6] During these proceedings, Father failed to consistently engage in services or demonstrate his continued improvement in his ability to care for Child. The court-ordered fatherhood engagement program was closed out based on Father's non-engagement. Father failed to complete a substance abuse assessment or submit to any drug screens. Father did not participate in a domestic violence assessment. Father failed to consistently visit with Child. Although he visited Child every few months by just dropping in on the relative caregivers, Father had not visited Child in more than a year before the termination of parental rights hearing. Father lacked employment during most of the CHINS proceedings. At the time of the termination hearing, Father had just started working at Hardee's. He also held odd jobs working for a construction company. Father's supervisor at the construction company owned the house in which Father was living, for which he had no lease and did not pay rent.

[7] On September 14, 2022, DCS filed its verified petition for the termination of Father’s parental rights. On November 28, 2022, and January 9, 2023, the trial court heard evidence on DCS’s petition. DCS’s Family Case Manager (FCM) and Child’s CASA both testified that termination was in Child’s best interests. FCM informed the trial court that Child’s current relative placement was willing to adopt Child. During the hearing, Father admitted that he was unable to properly care for Child and requested at least three more months to get back on his feet. The trial court concluded that it was not probable that Father would make any progress in three months given his lack of progress over the past two years. On February 17, 2023, the trial court issued its written findings of fact and conclusions thereon, terminating Father’s parental rights, and stating, in relevant part, that “[t]here is reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the [C]hild” and termination of Father’s parental rights is in Child’s best interest. (Appellant’s App. Vol. II, p. 10).

[8] Father now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. Standard of Review

[9] Father challenges the trial court’s termination of his parental rights to his Child. 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). “A

parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If “parents are unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[10] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans. dismissed*. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court’s judgment, and we accord deference to the trial court’s “opportunity to judge the credibility of the witnesses firsthand.” *Id.*

II. *Analysis*

[11] In order to terminate a parent’s rights to his or her child, DCS must 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.

* * * *

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . 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 [CHINS] . . . ;

(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 [CHINS];

(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 prove each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

[12] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

A. *Establishment of Child’s Age*

[13] As an initial matter, Father contends that DCS failed to present evidence “as to [Child’s] birthday.” (Appellant’s Br. p. 10). Interpreting Father’s argument as a challenge to Indiana Code section 31-35-2-4, we note that the trial court, at

DCS's request, admitted into evidence the underlying documents of the CHINS proceeding. These documents reflect Child's birthdate, which was admitted without any objection from Father. Despite Father's contention to the contrary, DCS is entitled to offer into evidence "the CHINS petition, the predispositional report, the parental participation order, the modification report or any other document or order containing written findings, which was required to be created during the proceedings." *Tipton v. Marion County Dep't of Pub. Welfare*, 629 N.E.2d 1262, 1266 (Ind. Ct. App. 1994) (wherein this court chastised the Office of Family and Children for its failure to admit the CHINS petitions, orders, and reports into evidence at the termination hearing); *see also Adams v. Marion County Office of Family & Children*, 659 N.E.2d 202, 204 (Ind. Ct. App. 1995) (finding sufficient evidence to uphold termination based solely upon the CHINS petition, CHINS order, predispositional report, and dispositional order). Furthermore, after the presentation of evidence in the termination hearing, the trial court entered into the record its oral findings and stated "[C]hild was born [o]n January 6 of 2020. [Ch]ild was six months old when removed from the home and has been removed for two and a half years." (Transcript p. 44). Accordingly, we conclude that DCS presented clear and convincing evidence to establish Child's age.

B. *Threat to Well-Being of Child*

[14] Here, the trial court terminated Father's parental rights solely based on the second prong of the statute, *i.e.*, "[t]here is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of

the child.” I.C. § 31-35-2-4(b)(2)(B)(ii). Despite DCS’s willingness to provide Father with services to enable him to safely care for Child, Father refused to take advantage of these opportunities. Even though he was court-ordered and Child tested positive at birth for illegal substances, Father failed to complete a substance abuse assessment or submit to any drug screens, nor did Father participate in a domestic violence assessment. Father had seen Child only three times since his removal, and had not seen Child at all during the year prior to the termination hearing. Father failed to remain in contact with DCS and to discuss his reunification options. It was reasonable for the trial court to infer that Father’s inability to create a bond and stay in regular contact with Child demonstrated the risk of future neglect if Child was placed in Father’s care. Father did not demonstrate that he could provide Child with a safe and stable home. Father’s recent employment with a construction company, through which he was allowed to live rent free in one of the unsold properties, is at best a temporary solution to his living situation.

[15] Father’s pattern of conduct demonstrates that he made no overall progress toward resolving the identified risks to Child, and his failure to engage in services during these proceedings demonstrates a “lack of commitment to complete the actions necessary to preserve [the] parent-child relationship.” *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). Father admitted at the termination hearing that his situation, including his housing and employment, were insufficient for him to be able to care for Child. The trial court was entitled to weigh the evidence as it found appropriate in the context of this case

and based on Father's habitual unwillingness or lack of commitment to address parenting issues, substance abuse problems, and his employment and living situation, the trial court reached the conclusion that the continuation of the parent-child relationship posed a threat to Child's well-being. See *In re A.K.*, 924 N.E.2d at 221 (evidence that Mother is unable to remain drug free, manage her mental illness, maintain stable housing, remain in contact with DCS, and meet the case plan requirements supports the conclusion that continuation of the parent-child relationship poses a threat to child's well-being). As such, we affirm the trial court's decision.

C. *Best Interests*

[16] Father also challenges the trial court's conclusion that termination is in Child's best interests. To determine whether termination is in a child's best interests, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* In this regard, "recommendations by both the case manager and the 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 child's best interests." *Id.* at 1158-59.

[17] Here, both FCM and CASA testified that termination is in Child's best interests. FCM informed the trial court that Child's current relative placement

was willing to adopt Child. Evidence establishing the unfitness of a parent—as established by the trial court’s unchallenged findings—may also support a court’s legal conclusion that termination is in Child’s best interests. *In re A.K.*, 924 N.E.2d at 221. Father has not engaged in any services ordered by the CHINS court. Father failed to remain in contact with DCS and to pursue reunification services. During the termination hearing, Father admitted that he was unable to properly care for Child and requested at least three more months to get back on his feet. The trial court concluded that “two and half years is plenty of time even during Covid, [] to contact [DCS] and take advantage of the referrals that were put in place. [Father] ha[sn’t] done any of them. I don’t see where ninety days is going to get us anywhere further than the last two and a half years.” (Tr. p. 44).

[18] It is uncontested that Father remains unwilling to provide Child with safe and stable permanency. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014). Even though “the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child’s interest to maintain this relationship.” *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Therefore, we conclude that Father’s historical lack of participation in services requested by DCS to address the issues which led to Child’s removal from the home, supports the trial court’s conclusion that termination of his parental rights is in the best interests of Child. Accordingly, we affirm the trial court’s decision.

CONCLUSION

[19] Based on the foregoing, we conclude that DCS presented clear and convincing evidence to support the trial court's termination of Father's parental rights to Child.

[20] Affirmed.

[21] Bradford, J. and Weissmann, J. concur