

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

S.L.D. (Minor Child),
and

C.C. (Mother) and C.D. (Father),
Appellants-Respondents,
v.

Indiana Department of Child
Services,
Appellee-Petitioner.

May 23, 2023

Court of Appeals Case No.
22A-JT-3013

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2208-JT-115

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

- [1] C.D. (“Father”) appeals the trial court’s order terminating his parental rights over his minor child, S.L.D. (“Child”).¹ We affirm.

Issues

- [2] Father raises two issues for our review, which we revise and restate as follows:
1. Whether certain findings of fact are supported by the evidence.
 2. Whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of his parental rights.

Facts and Procedural History

- [3] Child was born on March 6, 2020, to Father and C.C. That same day, DCS received a report that Child was a victim of neglect because “neither parent was able to provide appropriate housing for their newborn Child, and neither parent was addressing their respective mental health issues.” Ex. at 19. Father was then involved in a domestic altercation, which resulted in the State charging

¹ Child’s mother, C.C., has consented to Child’s adoption and does not participate in this appeal.

him on May 27 with battery in the presence of a child. DCS and the parents entered into an informal adjustment, which the parents did not successfully complete.

[4] On February 15, 2021, DCS filed an amended petition alleging Child to be a Child in Need of Services (“CHINS”). In that petition, DCS alleged that Father’s “whereabouts were unknown for some time,” that he had failed to contact DCS “to facilitate services” for a period of time, and that he had been charged with domestic battery. *Id.* On March 5, the court ordered DCS to remove Child from the custody of the parents. Following a fact-finding hearing at which Father “admit[ted to] substance abuse [and] mental health issues,” and “agree[d] to take a domestic violence assessment, the Court adjudicated Child a CHINS. *Id.* at 26. Father then participated in one visit with Child on April 26.

[5] Thereafter, the court held a dispositional hearing, at which Father appeared with counsel. And, on May 12, the court entered its dispositional order and ordered Father to, among other things, contact the caseworker every week; allow the caseworker to visit the home; keep all appointments with service providers; maintain suitable housing; “see that the child is properly clothed, fed, and supervised”; not use illegal substances; obey the law; engage in a domestic violence assessment; and visit with Child. *Id.* at 31.

[6] Following the dispositional order, Father did not contact DCS. He was not “able to be found,” and he did not “start[] any services.” Tr. at 39. Because of Father’s “lack of communication,” neither the DCS Family Case Manager

(“FCM”) nor Child’s Court-Appointed Special Advocate (“CASA”) was able to contact Father. *Id.* at 24. Father “has not completed any service” that was offered or ordered. *Id.* at 35. Father did not make any “efforts to complete” his clinical interview and assessment, his visitation referral was “closed due to noncompliance,” and he “has not communicated” with his homebased casework provider. *Ex.* at 40. Father was evicted from his home on July 28.

[7] Father then pleaded guilty to the domestic battery charge, and, on August 24, the court sentenced him to one year suspended to probation. A short time later, on October 22, the State filed a notice of probation violation, and Father admitted to the allegations. Father did not appear at the subsequent sanctions hearing, and the court issued a warrant for his arrest. Sometime in June 2022, DCS Family Case Manager (“FCM”) Brandi Sorrell became involved in Child’s case. During her involvement, FCM Sorrell did not “receive[] any contact at all from” Father. *Tr.* at 31.

[8] Father was ultimately arrested, and, on August 30, the court revoked his probation and sentenced him to serve 351 days in the Madison County Detention Center. On September 1, DCS filed a petition to terminate Father’s parental rights as to Child. The court held a hearing on DCS’s petition on November 28. During that hearing, Child’s CASA testified that, for the “entirety” of the year and one-half that she had been involved with Child, Father had not seen Child. *Id.* at 20. She further testified that Child’s placement, who Child calls “mommy,” meets all of Child’s needs “and then some.” *Id.* at 21, 23. And she testified that “any further process of trying to

reunify” Child with Father “would contribute to her trauma more” and that it would be in Child’s “best interests” for Father’s rights to be terminated. *Id.* at 22-23.

[9] FCM Sorrell testified that she has seen Child “grow” and that she is “very bonded” with her placement, which is a preadoptive home. *Id.* at 32-33. She also testified that the recommendation of DCS “is to terminate the parent[-]child relationship at this time.” *Id.* at 34. She further testified that Child “deserves permanency” and that it would “[a]bsolutely” cause Child “trauma” if she were removed from her current placement. *Id.* at 35-36. And she testified that “[C]hild does not know who Father is.” *Id.* at 36.

[10] Father testified and acknowledged that he was currently incarcerated because he had violated the terms of his home detention, but he alleged that he would be released soon to work release. He also testified that, throughout the underlying proceedings, he did not “know” what DCS “wanted” from him. *Id.* at 45. He also testified that he had visited Child “one time” but stopped going because “he felt like [he] was being bullied” and “set up for failure[.]” *Id.* at 46. He admitted that it had been “almost two years” since he last saw Child. *Id.* at 53. Father further admitted that has “done heroin” and used marijuana since Child’s birth but that he last used “six[,] seven months ago.” *Id.* at 57. Father also acknowledged that he was “present” when the court ordered him to participate in services but that he had “not done anything on the list[.]” *Id.* at 58.

[11] Following the hearing, the court entered its findings of fact and conclusions thereon and terminated Father’s parental rights as to Child. In particular, the court found that Father’s “actions throughout both the CHINS case and this termination action show that he is unwilling or unable to provide [Child] a safe and stable home with stable parenting and supervision, now or in the near future.” Appellant’s App. Vol. 2 at 7. Accordingly, the court concluded that “[t]here is a reasonable probability that the conditions that resulted in the child’s removal or the continued placement outside the home will not be remedied or that the parent-child relationship poses a threat to the well-being of the child.” And the court concluded that the termination of Father’s parental rights “is in the child’s best interests.” *Id.* This appeal ensued.

Discussion and Decision

[12] Father challenges the trial court’s termination of his parental rights over Child. We begin our review of this issue by acknowledging that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.*

Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

- [13] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Issue One: Findings of Fact

- [14] Father first asserts that two of the court's findings are not supported by the evidence. Here, in terminating Father's parental rights, the trial court entered findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings and, second, we determine 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 trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[15] On appeal, Father challenges the court's finding number 8, in which the court found:

8. [Father] has not complied with his dispositional orders. Review of the underlying orders from the CHINS court reflected that he

- a. Had periods of several months at a stretch where he failed to maintain contact with DCS or his service providers;
- b. Failed to keep appointments with providers, resulting, for example, in his supervised parenting services being closed by the provider for his non-compliance;
- c. Failed to engage in the recommended domestic violence and mental health services;
- d. Failed to engage in the recommended mental health services, such as assessments and medication management, to allow him to be personally sufficiently healthy to parent a growing toddler;
- e. Failed to maintain housing for and ability to parent [Child], being an incarcerated person in a facility that does not accommodate toddlers being placed with a parent.

Appellant's App. Vol. 2 at 6.

[16] Father asserts that the finding is unsupported by the evidence because it "was based on orders from the CHINS case on things the [F]ather had not done,"

and that a “CHINS case is decided under” a lower standard of review.

Appellant’s Br. at 7. And Father contends that the “evidence that was the basis of the CHINS finding was not presented in this action.” *Id.* at 8. We cannot agree.

[17] First, we note that the court admitted the entire CHINS record into evidence without objection from Father.² Among that evidence were two orders on periodic case reviews. In the order following a June 16, 2021, hearing, the court found that Father “is non-compliant with supervised visitation,” having only visited with Child on one occasion. Ex. at 34. And the court noted that referrals had been put in place for Father to get homebased case work and a clinical interview and assessment. Then, in an order following a July 14, 2021, hearing, the court found that Father “is not compliant with services,” that he “has not remained in contact with” DCS, that he “has not made any further efforts to complete” his clinical interview and assessment, that he “stopped communicating” with his visitation supervisor, and that he “was not compliant with Homebased Case Work.” *Id.* at 39-40. And, in an order changing the permanency plan to adoption, the court found that Father “was out of contact with [DCS] for nearly six (6) months” and that he “has not engaged in any services[.]” *Id.* at 45.

² The court, however, only admitted the CHINS petitions with the caveat that they were not being admitted for the truth of the matter asserted.

[18] Second, DCS presented the testimony of Child’s CASA and FCM Sorrell at the hearing on its petition to terminate Father’s parental rights. Child’s CASA testified that Father had not seen Child in the one and one-half years she had been involved and that, because of Father’s lack of communication, neither she nor Child’s FCM had been able to contact Father. Tr. at 24. In addition, FCM Sorrell testified that, following the dispositional order, Father was not “able to be found,” and he did not “start[] any services.” *Id.* at 39. And even Father acknowledged that, other than the one visit with Child two years prior to the fact-finding hearing, he had not “done anything” to participate in services. *Id.* at 58. Thus, the evidence in the record clearly supports the trial court’s finding number 8.

[19] Father next challenges finding number 22, in which the court found:

Alleged Father^[3] claims that he does not know what DCS wants of him, a claim this Court does not adopt, as the CHINS court told him at the dispositional hearing and in writing (which Alleged Father could, at his request, have the assistance of another person of his choice read to him). Alleged Father ha[d] competent counsel in both the CHINS and this Termination case who are available precisely for the purpose of answering any of [Father’s] questions.

Appellant’s App. Vol. 2 at 7.

³ It is unclear why the court referred to Father as “Alleged Father.” Father testified that he had signed a paternity affidavit when Child was born. *See* Tr. at 52.

[20] Father contends that “[t]he dispositional order contains no such statement” and that “[t]here would be no way for the trial court to know what was told [to] the father at that hearing.” Appellant’s Br. at 8. However, the dispositional order demonstrates that Father was present for the dispositional hearing and that he was represented by counsel. *See* Ex. at 28. And the order shows that it was distributed to both Father and Father’s counsel. *Id.* at 32. As such, the court’s finding that Father knew of the obligations contained in the dispositional order is supported by the evidence. To the extent the evidence does not support the finding that the court had read the obligations contained in the dispositional order to Father, any error is harmless in light of the fact that both Father and his attorney received a copy of the order.

Issue Two: Termination of Parental Rights

[21] Father next contends that DCS failed to present sufficient evidence to support the termination of his parental rights. Before an involuntary termination of parental rights can occur in Indiana, 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. . . .

(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) (2022). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dept of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[22] Here, the court concluded that there “is a reasonable probability that the conditions that resulted in the child’s removal or the continued placement outside the home will not be remedied by the parent or that continuation of the parent-child relationship poses a threat to the well being of the child.” Appellant’s App. Vol. 2 at 9. The court also found that the termination of the parent-child relationship was in Child’s best interests. On appeal, Father only challenges the court’s “remedy” conclusion. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court need only find that one of the requirements of that subsection has been established by clear and convincing evidence. *See S.K., Sr. v. Ind. Dep’t of Child Servs. (In re S.K.)*, 124 N.E.3d 1225, 1233 (Ind. Ct. App. 2019). Because Father failed to challenge the “threat” prong of that subsection, he has waived our review of the sufficiency of the evidence to support the court’s conclusion on either prong. Waiver

notwithstanding, we address the merits of Father's contention that DCS presented insufficient evidence to prove that the conditions that resulted in Child's removal and the reasons for her continued placement outside of Father's home will not be remedied.

[23] To determine whether there is a reasonable probability that the reasons for Child's continued placement outside of Father's home will not be remedied, the trial court should judge Father's fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren]." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id.*

[24] On appeal, Father contends that the court erred when it concluded that there is a reasonable probability that the reasons for Child's removal and continued placement outside of his care will not be remedied because, while he failed to complete all services, some were "beyond" his ability to complete. Appellant's Br. at 11. He also contends that there "was no showing of any nexus between"

his drug use and any harm to Child. And he contends that, while he was incarcerated at the time of the fact-finding hearing, he “was due to be released” soon after. *Id.* at 13.

[25] However, the trial court did not terminate Father’s parental rights solely because he previously used drugs or because he was incarcerated. Rather, the trial court terminated Father’s rights because Father did not take any action to get Child back into his care. The trial court found, and the evidence supports, that Father did not participate in, let alone successfully complete, any services. As discussed above, following Child’s removal by DCS, the only service Father participated in was one visit with Child, which occurred nearly two years prior to the fact-finding hearing. Following the court’s dispositional order, Father stopped contacting DCS, and he failed to participate in any service, which resulted in the referrals being closed. Indeed, even Father admitted that, while he was present when the court ordered him to participate in services, he had “not done anything on the list[.]” Tr. at 58. Put simply, Father has not demonstrated any willingness or ability to parent Child.

[26] Father’s argument on appeal is simply a request for this Court to reweigh the evidence, which we cannot do. Based on the totality of the circumstances, we hold that the trial court’s findings support its conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal and the reasons for her continued placement outside of Father’s care will not be remedied.

Conclusion

[27] The trial court's findings of fact are supported by the evidence. And DCS presented sufficient evidence to demonstrate that the reasons for Child's removal or continued placement outside of Father's care will not be remedied. As such, the court did not err when it terminated Father's parental rights as to Child.

[28] Affirmed.

Brown, J., and Weissmann, J., concur.