

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re: The Termination of the
Parent-Child Relationship of
Tah.O., Tay.O., Tav.O., and
Tal.O. (Minor Children);
T.T. (Father),
Appellant-Defendant

v.

The Indiana Department of
Child Services,
Appellee-Plaintiff.

June 16, 2023

Court of Appeals Case No.
22A-JT-2106

Appeal from the Grant Superior
Court

The Honorable Dana J.
Kenworthy, Judge

Trial Court Cause No.
27D02-2109-JT-86
27D02-2109-JT-87
27D02-2109-JT-88
27D02-2109-JT-89

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] T.T. (“Father”) appeals the termination of the parent-child relationship with his four children.¹ He contends that there is insufficient evidence to support the terminations. Concluding that there is sufficient evidence to support the terminations, we affirm the trial court’s judgment.

[1] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

[2] Father and Mother (collectively, “Parents”) are the parents of daughter Tav.O. (“Tav.O.”), who was born in February 2012; son Tay.O. (“Tay.O.”), who was born in June 2013; son Tah.O. (“Tah.O.”), who was born in May 2014; and daughter Tal.O. (“Tal.O.”), who was born in November 2017 (collectively, “the

¹ The trial court also terminated the parental rights of the children’s mother (“Mother”); however, Mother is not participating in this appeal.

children”). In June 2018, DCS received a report that Mother had attempted to commit suicide by crashing her car into a brick wall while Father and three of the children were in the car. Two of the children had not been properly restrained. Mother and Father had been arguing that day in the presence of the children.

[3] DCS’ initial assessment revealed that Parents had a history of domestic violence and that their home was in disrepair. Specifically, the DCS case worker noticed broken glass and broken furniture in the home as well as alcohol and pills within the children’s reach. Father told the DCS case worker that Mother had broken a glass picture frame over his head in the presence of Tav.O.

[4] DCS filed a petition alleging that the children were children in need of services (“CHINS”) but allowed the children to remain in the home because Parents had cleaned up their house. The trial court adjudicated the children to be CHINS and, in September 2018, issued a dispositional order. The dispositional order required Father to: (1) maintain weekly contact with DCS; (2) allow DCS or other service providers to make unannounced visits to the home and permit them to enter the home to ensure the safety of the children; (3) maintain suitable, safe, and stable housing; (4) secure and maintain a stable source of income that was adequate to support all household members, including the children; (5) establish paternity of the children; (6) abstain from the use of illegal substances; and (7) complete a parenting assessment and successfully complete all programs that the assessor recommended.

[5] In a January 2019 periodic case review order, the trial court noted that Father had not complied with the CHINS dispositional order. Specifically, Father had not maintained weekly contact with DCS and had not completed a parenting assessment or paternity testing. In addition, in October 2018, Father had refused to allow a DCS family case manager to enter Parents' home to see the children. The trial court's order further noted that Father had recently moved into his mother's one-bedroom apartment because of frequent arguments with Mother.

[6] In February 2019, the trial court authorized DCS to remove the children from Mother's home because the children had not been regularly attending school, Mother had gone to the children's school when she was intoxicated, and Mother had allowed the younger children to stay with an unapproved caregiver who lived in a condemned house. DCS placed Tal.O. with Father, Tav.O. with a relative, and Tay.O. and Tah.O. with a foster family. One week later, the relative took Tav.O. to Father's home. DCS allowed Tav.O. to remain with Father. A DCS family case manager also told Father that Tah.O. and Tay.O. could be placed with him if he obtained appropriate housing for the children, followed a safety plan, and complied with the CHINS dispositional order.

[7] Also in February 2019, Family Service Society Case Manager Jacob Bradford ("Case Manager Bradford") began providing home-based case management services to Father. Case Manager Bradford also supervised Father's visits with the children. In March 2019, Father contacted Case Manager Bradford and reported that someone was attempting to break into his home. Case Manager

Bradford contacted the police and went to Father's home. At some point, police officers arrived at Father's home but found no evidence that anyone had attempted to break into the home. Father told Case Manager Bradford that Father had to leave for a few minutes but that he would be right back. Father left Tav.O. and Tal.O. with Case Manager Bradford. When Father had failed to return to the home an hour later, Case Manager Bradford attempted to text and call Father. However, Father did not respond to the text messages or phone calls. After waiting for two hours, Case Manager Bradford contacted DCS. A DCS case manager went to Father's home and also attempted to contact Father, but Father did not respond to the case manager's text messages or phone calls. When Father returned to the home after having been gone for three hours, DCS was in the process of removing Tav.O. and Tal.O. The DCS case manager asked Father to submit to a drug screen. Father refused the drug screen but told the DCS case manager that he had taken amphetamines so that he could stay awake to watch for the person who had attempted to break into his home.

- [8] Two months later, in an unrelated matter, the State charged Father with: (1) Level 6 felony battery against a public safety official; (2) Level 6 felony battery by bodily waste; (3) Class A misdemeanor resisting law enforcement; and (4) Class B misdemeanor disorderly conduct. Father was incarcerated on these charges from May 2019 until the beginning of November 2019, when he pleaded guilty to Level 6 felony battery against a public safety official. In

exchange for Father's guilty plea, the State dismissed the remaining charges. Father was unable to participate in services during his incarceration.

[9] Following Father's release from incarceration in November 2019, Father tested positive for methamphetamine. Shortly thereafter, Father began partially complying with the CHINS dispositional order. Specifically, Father maintained regular contact with DCS, completed a parenting assessment, and participated in recommended services, including individual therapy with Megan Boruff ("Therapist Boruff"). Father attended his first therapy session in December 2019 but attended only six sessions from December 2019 until November 2020. Father did not successfully complete his treatment plan with Therapist Boruff.

[10] In October 2020, DCS referred Father to a fatherhood engagement program at the Children's Bureau. Case manager Andrew Lykens ("Case Manager Lykens") met with Father to assist Father in obtaining safe and suitable housing as well as appropriate parenting skills. Father achieved his housing goal when he secured a large apartment that was suitable for the children. However, Father never moved into the apartment and stopped attending sessions with Case Manager Lykens in January 2021.

[11] By early July 2021, Father had been discharged from the fatherhood engagement program. Father had also failed to attend scheduled drug screens on multiple occasions and had only attended three of ten possible visits with the children over the previous five months. Also, in July 2021, Father told DCS

family case manager Alexandra King (“FCM King”) that he had heard people attempting to break into his apartment. According to Father, he had contacted the police multiple times; however, police officers had never found evidence of any attempted break-ins. Father also told FCM King that there was someone hiding under his bed who was going to attempt to kill Father.

[12] At the end of July 2021, Father contacted FCM King at 9:00 p.m. and told her that he was in the hospital emergency room. Father further told FCM King that the hospital employees were going to harm him. Father asked FCM King to ask a nurse to bring him an unopened bottle of water because he believed that the nurse had put a harmful substance in the cup of ice water that she had brought him. Later that night, Father was involved in an altercation at the hospital, and the State charged him with: (1) Level 6 felony battery against a public safety official; (2) Class A misdemeanor resisting law enforcement; and (3) Class B misdemeanor disorderly conduct.²

[13] DCS filed a petition to terminate Parents’ parental relationships with the children in September 2021. Thereafter, Father began contacting DCS more frequently. In addition, Father attended a diagnostic evaluation. Father was subsequently diagnosed with: (1) anxiety; (2) major depressive disorder; (3) intermittent explosive disorder; (4) alcohol abuse; (5) stimulant abuse; (6) cannabis abuse; and (7) post-traumatic stress disorder. Father consistently

² These charges were still pending at the time of the April 2022 termination hearing.

visited the children from October 2021 until January 2022, when Father stopped attending the visits.

[14] Also in January 2022, Father went to Mississippi to help his sister. Father was arrested at a hospital in Alabama on his way back to Indiana. However, Father refused to provide details about the arrest to FCM King. In March 2022, Father told FCM King that if the termination hearing did not go his way, he would have to harm someone and would probably go to jail. Also, in March 2022, Father was living in a rescue mission.

[15] The trial court heard the facts as set forth above at the April 2022 termination hearing. In addition, therapist Sandra Duecker (“Therapist Duecker”), who had been providing therapy to Tav.O., Tah.O., and Tay.O. for more than a year, testified that the children needed a home life that included honesty, structure, and predictability. Therapist Duecker further testified that termination was in the children’s best interests. CASA Nancy Stevens (“CASA Stevens”) also testified that termination was in the children’s best interests. According to CASA Stevens, the children no longer talked about Father.

[16] In addition, FCM King testified that she had concerns about Father’s mental health. She further testified that the children had been removed from Father for more than three years and that “the problems that [had] led to [the children’s] removal [were] not likely to be fixed[.]” (Tr. Vol. 2 at 123). Father acknowledged that the children had been out of the home for more than three

years but asked the trial court to give him an additional four to six months “to give it one last shot[.]” (Tr. Vol. 2 at 150).

[17] In August 2022, the trial court issued a detailed twenty-five-page order terminating Father’s parental rights. The order noted that Father had continued to struggle with mental health instability and had “ultimately completed no treatment services designed to help [him] reunify with the children.” (App. Vol. 2 at 166).

[18] Father now appeals.

Decision

[19] Father argues that there is insufficient evidence to support the terminations. The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *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. *Id.* at 1188. Termination of the 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.*

[20] Before an involuntary termination of parental rights may occur, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K. v. Indiana Department of Child Services, Dearborn County Offices*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[21] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re Involuntary Termination of Parent-Child Relationship of R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[22] Here, Father argues that there is insufficient evidence to support the termination of his parental rights. Specifically, he contends that the evidence is

insufficient to show that there is a reasonable probability that: (1) the conditions that resulted in the children's removal or the reasons for their placement outside the parent's home will not be remedied; and (2) a continuation of the parent-child relationships poses a threat to the children's well-being.

[23] At the outset, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not be remedied.

[24] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect,

failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *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 his future behavior. *E.M.*, 4 N.E.3d at 643.

[25] Here, our review of the evidence reveals that DCS initially allowed the children to remain in the home. During that time, Father moved out of the home because of frequent arguments with Mother. After the children had been removed from Mother's home, DCS placed Tal.O. with Father and subsequently allowed Tav.O. to also be placed with Father. DCS further told Father that Tay.O. and Tah.O. could be placed with him if he obtained appropriate housing and complied with the CHINS dispositional order. However, shortly thereafter, Tav.O. and Tal.O. were removed from Father after he suffered a mental health episode and left his daughters at home for three hours with service providers. Tay.O. and Tah.O. had never been placed with Father because Father did not have appropriate housing for them.

[26] Our review of the evidence further reveals that during the course of the CHINS proceedings, which lasted for more than three years, Father never successfully completed any of the court-ordered services. In addition, Father continued to struggle with mental health instability. Further, the State twice charged Father

with Level 6 felony battery against a public safety official, Class A misdemeanor resisting law enforcement and Class B misdemeanor disorderly conduct for separate incidents, one in 2019 and the other in 2021. The second set of charges was still pending at the time of the termination hearing. Further, Father was never able to obtain appropriate housing for the children, and, at the time of the termination hearing, Father was living in a rescue mission. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied.

[27] Father also argues that DCS failed to prove by clear and convincing evidence that termination was in the children's best interests. In determining whether termination of parental rights is in the children's best interests, the trial court is required to look at the totality of the evidence. *In re Termination of the Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the children involved. *Id.* In addition, a child's need for permanency is a central consideration in determining that child's best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the children's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[28] Here, our review of the evidence reveals that at the time of the termination hearing, the children had been out of Father's home for more than three years.

In addition, Therapist Duecker and CASA Stevens both testified that termination was in the children's best interests. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the children's best interests.

[29] Affirmed.

Altice, C.J., and Riley, J., concur.