

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Mark K. Leeman
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General

Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:

T.L. (Minor Child)

And

Z.G. (Father)

Appellant-Respondent,

v.

Indiana Department of Child
Services,

May 26, 2022

Court of Appeals Case No.
21A-JT-2826

Appeal from the Cass Circuit
Court

The Honorable Stephen R. Kitts
II, Judge

Trial Court Cause No.
09C01-2110-JT-16

Appellee-Plaintiff.

Altice, Judge.

Case Summary

- [1] Z.G. (Father) appeals the involuntary termination of his parental rights to T.L. (Child). He challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

Facts & Procedural History

- [3] Father moved from Chicago, Illinois to Logansport, Indiana in early 2014. He met K.L. (Mother) and they had a brief, intimate relationship. Unbeknownst to Father, Mother became pregnant during their relationship and gave birth to Child on December 13, 2014. Father learned of Child's birth "through the grapevine" and visited Mother and Child when Child was just a few months old. *Transcript Vol. 2* at 10. Father alleged that he had no other contact with Child, in part, because Mother kept Child from him. Father also admitted that his ability to be a part of Child's life was hindered by several stints in jail for

various criminal offenses. In November 2018, Father was sentenced to 1460 days in the Indiana Department of Correction (DOC) for a battery conviction. Since Child's birth, Father has never initiated legal proceedings to establish paternity.

[4] On February 26, 2020, the Cass County Department of Child Services (DCS) received a report concerning the welfare of Child, who was then five years old, and three other children¹ in Mother's care. The report came after Mother suffered a miscarriage and the baby's umbilical cord was positive for methamphetamine. On March 5, 2020, DCS received a second report that "expressed concern in regard to the welfare of the children [including Child] due to [Mother]'s frequent Methamphetamine use." *Appellant's Appendix Vol. II* at 47. As part of its investigation, DCS had Child submit to an oral drug screen. On March 10, 2020, the results of the oral drug screen showed that Child had been exposed to both methamphetamine and amphetamine.

[5] On March 11, 2020, DCS filed a verified petition alleging Child to be a child in need of services (CHINS). In the petition, DCS alleged that Father was incarcerated "with an earliest release date of February 2022," that he had a history of substance abuse (including methamphetamine), and that he had not established paternity. *Id.* at 59. On the same day, DCS instituted a paternity action, and Father's paternity of Child was established. After an

¹ The other children were Child's half-siblings as they shared the same biological mother.

initial/detention hearing, the trial court ordered that Child be detained and placed in kinship care with the paternal grandparents of Child's half-siblings. After a few months, Child was moved to foster care at the request of the kinship placement.

[6] On June 3, 2020, Mother admitted Child was a CHINS. On August 5, 2020, the court held a fact-finding hearing, at the conclusion of which the court adjudicated Child a CHINS. As to Father, the court found that he had “not maintained a meaningful role in the Child's life due to his incarceration and lack of knowledge of paternity.” *Id.* at 81. In the dispositional order, Father was ordered to participate in reunification services, including among other things, maintaining contact with the family case manager on a weekly basis, completing a substance abuse assessment and following all treatment recommendations, and attending all visitations.

[7] Following a September 2, 2020, review hearing, the court found that Father was unable to participate in services due to his incarceration but noted that he was cooperating with DCS and had “expressed an interest in telephone visits with [C]hild,” which DCS was going to arrange. *Id.* at 89. On December 16, 2020, the court again noted that Father was unable to participate in services due to his incarceration but noted that Father was maintaining contact with DCS and that he “would like to see [C]hild placed with his Parents.” *Id.* at 95. Father's participation in reunification services then became hindered when the DOC placed him in administrative segregation because of disciplinary and conduct issues as well as his unresolved and ongoing mental health issues.

- [8] In March 2021, DCS relocated Child to her paternal grandparents' home in Nevada, as requested by Father. While in the care of his mother, Father talked to Child over the phone a "few" times. *Transcript Vol. 2* at 19. Father did not speak to Child as frequently as he did his mother because he did not want Child "asking too many questions about where [he] was at because [he] was kind of ashamed of being incarcerated." *Id.* DCS Family Case Manager (FCM) Deanna McGee testified that although Father had talked to Child over the phone, there was no parent-child bond between them.
- [9] After three reports to the Nevada DCS of physical discipline by paternal stepfather, paternal grandparents requested that Child be removed from their home and returned to Indiana. Child was returned to Indiana and placed in the same foster home she had been in prior to her relocation to Nevada. Once settled back in Indiana, Child resumed her mental health routine, including medication and therapy. Child adjusted well to being back in foster care and was doing "fantastic." *Id.* at 31.
- [10] At a May 19, 2021, permanency hearing, the court noted that Father had accumulated twelve disciplinary conduct reports since the beginning of his incarceration in 2019 and that his release from the DOC had been bumped back to July 9, 2022. The court also noted that Father had begun a substance abuse program at the DOC. Father, however, withdrew from the program without completing it.

[11] On October 20, 2021, DCS filed a Verified Petition for Involuntary Termination of Parent-Child Relationship. A fact-finding hearing was held on December 1, 2021. Evidence presented at the hearing showed that Father had not completed his substance abuse treatment, he remained in the administrative segregation unit at the DOC, his release date had been bumped again to December 17, 2022, he had not visited with Child since she was an infant, he had not spoken with Child in several months, there was no parent-child bond between Father and Child, and Father had not otherwise enhanced his ability to fulfill his parental obligations. Father testified that upon his release from the DOC, his plans depended on “how [the termination proceedings] played out.” *Id.* at 16. DCS informed the court that its plan was for Child to be adopted by her current foster family.

[12] On December 14, 2021, the court issued its order terminating Father’s parental rights to Child.² In its order, the court made findings consistent with the facts as set out herein and concluded that there is a reasonable probability that the conditions that resulted in Child’s removal or continued placement outside the home will not be remedied, and that the continuation of the parent-child relationship poses a threat to Child’s well-being. The court also concluded that termination of Father’s parental rights was in Child’s best

² By August 24, 2021, Mother knowingly and voluntarily consented to termination of her parental rights and signed consents for the adoption of Child by her current caregivers. Mother does not participate in this appeal.

interests and that adoption was a satisfactory plan for the care and treatment of Child. Father now appeals.

Discussion & Decision

[13] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[14] We recognize that the traditional right of parents to “establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of

the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[15] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[16] We begin by addressing Father's argument that several of the court's findings are unsupported by the record. First, Father disputes the court's finding that he had "only spoken to the child two possibly three times all by telephone." *Appellant's Appendix Vol. II* at 225. Father points out that he saw Child in person when she was about two months old and directs us to his own testimony in

which he stated that he spoke with Child a “few” times from jail. *Appellant’s Brief* at 17 (quoting *Transcript Vol. 2* at 19).

[17] In its order, the court noted that Father had visited Child in person when she was an infant in addition to making a finding as to the frequency of his communication with Child. To the extent there is a discrepancy between the court’s finding that Father talked to Child two to three times and Father’s suggestion that it was more than that because he testified that he talked to her a “few” times, such is of no import as the record shows that Father had very little communication with Child, whether it was two to three times or a few times during the Child’s seven years.

[18] Father also disputes the court’s finding that his tentative release from incarceration is set for “late December of 2022.” *Appellant’s Appendix Vol. II* at 225 (emphasis supplied). At the termination hearing, Father testified that his release date was December 17, which he asserts is “in the middle of December.” *Appellant’s Brief* at 17. Whether December 17 is “late” December or in the “middle” of December is a distinction without a difference.

[19] Father also claims that the court’s finding that he “declined opportunities to visit with the child”³ is unsupported by the record. *Appellant’s Appendix Vol. II* at 226. Although Father testified that he talked to his mother two to three times a week, he admitted that he would not speak to Child every time because he did

³ Due to the Covid-19 pandemic, in-person visits were not permitted. Visitation had to occur via telephone.

not want her asking questions about his location because he was embarrassed and ashamed of the fact that he was incarcerated. Father argues that he “preferred to communicate with his child ‘through [his] mother’.” *Appellant’s Brief* at 17. Thus, Father made a choice to not visit with Child. Father’s argument demonstrates that the court’s finding is supported by the record.

[20] Father argues that the court incorrectly found that he has “no plans for housing or employment” upon his release from prison. *Appellant’s Appendix Vol. II* at 226. Father points to his testimony that his plans after his release were contingent on how the termination proceedings “played out.” *Transcript Vol. 2* at 16. Father asserts that there is a difference between having a contingent plan and having “no plans.” When asked if he planned to live in Indiana or Chicago upon his release, Father testified as follows:

I can’t call it right now because, you mean, I don’t know how this is going to play out but in the midst of that I was working with my family to try to, you mean, maybe a halfway house in the midst of me trying to get, like I say, this is, this is based on a suggestion of a family member so, you know, I can possibly get, you mean, some type of, you mean, like, living, living arrangement established so I wouldn’t have to be there with anybody else, you know what I mean?

Id. The court’s finding that Father did not have plans for housing or employment is not clearly erroneous.

[21] Father challenges only the trial court’s conclusions with respect to I.C. § 31-35-2-4(b)(2)(B)(i) and (ii).⁴ Because I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive, necessitating satisfaction of only one of the subsections, we will focus our review on the trial court’s determination 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.

In making such a determination, the court must judge a parent’s fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. 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 A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider 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. Moreover, a trial court “can reasonably consider the services offered by the [DCS] to the parent and the parent’s response to those services.” [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)]. In addition, “[w]here 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

⁴ The trial court made no determination regarding subsection (iii).

not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

In re N.Q., 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[22] In terminating Father’s parental rights, the court considered Father’s lack of bond and lack of contact with Child in the seven years since she was born. Father met Child only once when she was about two months old and had no further contact with Child until DCS instituted the CHINS action five years later. Before DCS involvement, Father did not attempt to establish paternity, which could have provided Father with the legal authority to enforce a visitation schedule with Child. After the CHINS action was initiated, Father declined multiple opportunities to visit with Child telephonically because he did not want to answer Child’s potential questions about why he was incarcerated. Father, therefore, had direct telephonic contact with Child, by his own choice, only a few times.

[23] Further, as noted by the court, Father also has a “significant” criminal history, causing him to have been in and out of jail during the life of Child. *Appellant’s Appendix Vol. II* at 225. Father has been incarcerated throughout the CHINS and termination proceedings and his release date has been delayed on more than one occasion due to disciplinary matters. At the time of the termination hearing, Father was housed in the administrative segregation unit of his correctional facility, and he is not scheduled to be released from incarceration until December 2022.

[24] Clearly, Father’s ability to care for Child has not changed over the years of DCS involvement. Father took no interest in parenting Child during the first five years of her life as shown by his failure to establish paternity or stay in contact with Child. Since DCS became involved, Father has had minimal contact with Child, and it remains that there is no parent-child bond between Father and his seven-year-old daughter. Further, Father has been in and out of jail for much of Child’s life. Even while incarcerated, Father has had disciplinary problems such that he is housed in administrative segregation and his release date has been delayed several times. Father’s overall pattern of conduct shows no overall progress. Based on the record, we cannot say the trial court’s conclusion that there is a reasonable probability that the conditions resulting in Child’s removal or continued placement outside the home will not be remedied is clearly erroneous.

[25] Father also argues that the record does not support the trial court’s conclusion that termination is in the best interests of Child. He notes that he “made efforts to develop a relationship” with Child, he “secured some books on parenting,” he understood his role as a parent would dictate his post-incarceration plan,” and he “absolutely” wanted to be part of Child’s life. *Appellant’s Brief* at 20, 21 (quoting *Transcript Vol. 2* at 20). Father requested more time so he could establish a relationship with Child after he was released from prison.

[26] Reiterating FCM McGee’s testimony that Child needed a “stable, permanent environment” that Father could not provide, the court stated at the conclusion of the termination hearing:

The question is whether I should put the child, who has been through this history of two DCS removals and four placements, through two more years of waiting to possibly establish a relationship that does not currently exist if conjectural plans might happen to work out. That's the suggestion that's being made, which is far too much of a stretch for the Court to say that's in the best interests of the child. The child has been through enough. . . . What is in the best interests of the child is for the child to have some permanency and move on from this.

Transcript Vol. 2 at 27, 41-42. In recommending termination of parental rights, FCM McGee also informed the court that Child is doing “extremely well” now that she is back in her foster placement in Indiana and has resumed her mental health routine. *Id.* at 25. DCS sufficiently established that termination was in Child’s best interests. Accordingly, the order terminating Father’s parental rights to Child was not clearly erroneous.

[27] Judgment affirmed.

Vaidik, J. and Crone, J., concur.