MEMORANDUM DECISION

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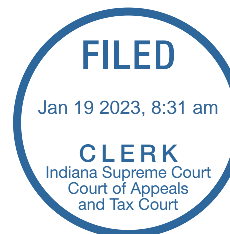

ATTORNEY FOR APPELLANT K.T.

Daniel G. Foote
Indianapolis, Indiana

ATTORNEY FOR APPELLANT R.T.

Don R. Hostetler
Hostetler Law, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Director, Child Services Appeals Unit
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of J.T. (Minor Child),

and

K.T. (Mother) and R.T. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

and

Kid's Voice of Indiana,

Appellee-Guardian Ad Litem.

January 19, 2023

Court of Appeals Cause No. 22A-JT-1568

Appeal from the Marion Superior Court

The Honorable Danielle P. Gaughan, Judge

The Honorable Tara Melton, Magistrate

Trial Court Cause No.

49D15-2103-JT-1568

Bradford, Judge.

Case Summary

[1] Child is the son of Father and Mother, who are separated. In 2018, the Department of Child Services ("DCS") filed a petition alleging Child to be a child in need of services ("CHINS") based on allegations of Father's domestic violence and Mother's incarceration. In 2022, the juvenile court granted DCS's petition for termination of parental rights ("TPR") as to Mother and Father. On appeal, Mother challenges the sufficiency of the evidence to prove that (1) a continued parent-child relationship threatens Child's wellbeing and (2) termination is in Child's best interests. She also argues that termination is an extreme measure. Father challenges the sufficiency of the evidence to prove that (1) the conditions resulting in Child's removal would not be remedied, (2) a continued parent-child relationship threatens Child's wellbeing, and (3) termination is in Child's best interests. We disagree and affirm.

Facts and Procedural History

[2] Child, born on July 1, 2011, is the biological child of Mother and Father, who are separated. Child last lived with Mother in 2015, when he was three or four years old. In July of 2018, Child was living with Father when DCS filed a

CHINS petition based on allegations of Father's domestic violence against his wife and his drug use and Mother's incarceration in Nebraska. When the CHINS case began, DCS could not locate Mother or serve her with process due to a discrepancy with her name.

I. Father

[3] In October of 2018, the juvenile court adjudicated Child to be a CHINS as to Father based on Father's admission that he "needs the assistance of DCS to provide a safe and stable home." Appellant's App. Vol. II p. 22. That same day, the juvenile court ordered DCS to remove Child from Father's custody and to place him with his paternal grandmother and ordered Father to engage in reunification services, including drug and alcohol screens, a substance-abuse assessment and treatment recommendations, home-based therapy, and a Father's Engagement Program. At some point, DCS placed Child with his current placement, Father's nephew.

[4] During the CHINS case, Father continued to engage in domestic violence. In December of 2018, police arrested Father for domestic battery and resisting law enforcement as Class A misdemeanors, to which Father ultimately pled guilty. In September of 2020, the State charged Father with two Level 5 felonies: battery resulting in bodily injury of a pregnant woman and battery by means of a deadly weapon, both involving his wife. Three months later, the State charged Father with Class A misdemeanor invasion of privacy for violating a no-contact order. In May of 2021, Father entered into a plea agreement for the

September and December of 2020 charges through which he pled guilty to domestic battery as a Class A misdemeanor. Finally, in October of 2021, police again arrested Father following another alleged domestic-violence incident involving his wife. Father spent a combined 130 days incarcerated for these incidents during the CHINS case.

[5] DCS continued to provide reunification services despite Father's incarcerations. Father began therapeutic visits with Child in December of 2020, supervised by Child's therapist, Mike Matt. Matt was only able to supervise three visits due to lack of contact with Father and ended the third visit early because he "believed Father was not sober." Appellant's App. Vol. II p. 35. Ultimately, Matt closed the referral service because Father had stopped participating. DCS again referred Father for supervised visits sometime before September of 2021, but Father only attended two visits due to his incarceration before being discharged from the service.

[6] In May of 2020, Father began a Father's Engagement Program; however, by September of 2020 he was discharged from the program for lack of consistent participation. In July of 2020, DCS referred home-based therapy for Father, but Father was again discharged after he only attended one session. DCS referred Father to another Father's Engagement Program in April of 2021, at which point Father's supervised visitation had been suspended again due to his failure to attend visits, but by January of 2022, Father was again discharged from the program because "there had been no communication […] and no activity" from Father "for months." Appellant's App. Vol. II p. 26.

[7] Additionally, the juvenile court required Father to submit to random drug screens. In total, during the CHINS case Father submitted to sixty-five of 225 screenings. Father tested positive for illegal substances on multiple occasions, including for amphetamine and methamphetamine on October 26, 2021; cocaine on May 6, 2021; cocaine on August 3 and August 7, 2020; buprenorphine on April 23, 2020; noroxycodone, oxycodone, and oxymorphone on March 19, 2020; oxycodone on February 3, 2020; and buprenorphine on November 14, 2019. Prior to the termination proceeding in 2022, however, Father produced five negative drug screenings from October to December of 2021. Father also completed some substance-abuse assessments, but never completed the recommended treatment because "he did not like the classes." Appellant's App. Vol. II p. 30.

[8] In October of 2021, while Child's CHINS case was pending, Father had another child, L.T., removed from his care and adjudicated a CHINS in Vigo County based on his substance abuse and domestic violence. Prior to the termination proceeding in Child's case, Father told Vigo County family case manager ("FCM") Haylie Wilhite that "he was not worried about [Child] because [his] nephew was caring for [Child], and he was focused on [L.T.]." Appellant's App. Vol. II p. 29.

II. Mother

[9] At the start of Child's CHINS case, DCS could not locate Mother. Mother was incarcerated from December 25, 2017, until December 21, 2018, for domestic

assault in Nebraska. DCS finally located Mother and she appeared in-person for an initial CHINS proceeding in January of 2019. At this point, the juvenile court ordered Mother to maintain contact with DCS and stable housing.

[10] Starting in February of 2019, Mother had scheduled six supervised virtual visits with Child and Child and Matt, but only four took place because Mother could not be reached. During the virtual visits, Mother appeared "to be sporadic, distracted, and as having other things to do[.]" Appellant's App. Vol. II p. 34. During Mother's one in-person visit, Matt observed that "Mother and [C]hild [do] not really know one another" and had no "parental bond." Appellant's App. Vol. II p. 34. After eight weeks of attempting to schedule supervised visits, Matt ceased scheduling visits "due to the negative impact they were having on [Child]." Appellant's App. Vol. II p. 35.

[11] From June of 2020 until December of 2020, Mother was again incarcerated. Upon her release, Mother entered a treatment facility as part of her probation. Meanwhile, in February of 2021, the juvenile court ordered Mother to engage in reunification services, including substance-abuse treatment, family therapy, home-based case management, and drug screens.

[12] Additionally, the juvenile court ordered Mother to participate in therapeutic parenting-time visits to help Mother cultivate a relationship with Child because she had not parented Child since 2015. While Mother served her probation at the treatment facility, she began telephonic visits with Child, which would progress to video visits if Mother attended consistently. However, Mother

failed to complete the telephonic visits, so she never progressed to video visits. Once Mother left the treatment facility, her participation in the visits "decreased in time and quality[,]" she was "largely inattentive and not alert[,]" and her relationship with Child "did not grow[.]" Appellant's App. Vol. II p. 33. Around June of 2021, DCS "discharged Mother from services for noncompliance." Appellant's App. Vol. II p. 33. One month later, Mother was incarcerated in a federal prison in West Virginia for possession of cocaine with intent to distribute. Mother's expected release date is May 2, 2025.

III. Termination Proceedings

[13] In October of 2021, DCS filed its TPR petition as to Mother and Father. DCS service providers, including Matt, FCM Erin Schoettle, FCM William Brown, and Guardian ad Litem ("GAL") Marquia Washum, recommended that termination and adoption would serve Child's best interests. In June of 2022, based on these recommendations, Father's history of domestic violence and substance abuse, Mother's incarceration and criminal history, and their failure to complete reunification services, the juvenile court granted DCS's TPR petition.

Discussion and Decision

[14] The Fourteenth Amendment of the United States Constitution protects parents' right to raise their children; however, that right "may be terminated when parents are unable or unwilling to meet their parental responsibilities." *In re*

N.G., 51 N.E.3d 1167, 1169 (Ind. 2016) (citing *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005)). In other words, parental rights, when necessary, must be subordinate to the child's best interests. *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008). The termination of parental rights is appropriate "where the [child]'s emotional and physical development is threatened." *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. However, juvenile courts "need not wait until the [child is] irreversibly harmed […] before terminating the parent-child relationship." *Id.*

[15] When reviewing the termination of a parental relationship,

> [w]e do not reweigh the evidence or determine the credibility of witnesses, but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. We confine our review to two steps: whether the evidence clearly and convincingly supports the findings, and then whether the findings clearly and convincingly support the judgment.

In re N.G., 51 N.E.3d at 1170. Given the juvenile court's proximity to the evidence and witnesses, we will reverse its decision to terminate a parent-child relationship only if the decision is clearly erroneous. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). "A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. A judgment is clearly erroneous only if the findings of fact do not support the [juvenile] court's conclusions thereon, or the conclusions thereon do not support the judgment." *In re A.B.*, 887 N.E.2d at 164 (internal citations omitted).

[16] To support the termination of Mother's and Father's parental rights to Child, DCS needed 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.
>
> (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
>
> (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department 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 child in need of services or a delinquent child;
>
> (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). Notably, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, requiring only one of those elements to be satisfied. *See In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010).

[17] Father argues that DCS failed to provide sufficient evidence to prove that (1) the conditions leading to Child's removal would not be remedied, (2) continuing his parental relationship with Child threatened Child's wellbeing, and (3) that termination was in Child's best interests. For her part, Mother challenges the juvenile court's determination that the ongoing parent-child relationship threatens Child, and that termination is in Child's best interests. She does not challenge the juvenile court's determinations on the other section (B) elements.

[18] To begin, we agree with the juvenile court that DCS produced sufficient evidence to support a finding that "there is a reasonable probability that the conditions that resulted in [Child]'s removal from and continued placement outside of his parents' care will not be remedied." Appellant's App. Vol. II p. 41. In assessing this element, we must evaluate not only Mother's and Father's fitness at the time of the termination proceeding, but also their habitual standards of conduct. *McBride v. Monroe Cnty. Off. of Fam. and Child.*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Here, Mother and Father had consistently engaged in criminal activity during the CHINS case. Father spent 130 days incarcerated for multiple incidents related to domestic violence and violating no-contact orders. Similarly, Mother has been in and out of incarceration since Child's CHINS case began; in fact, she is currently

incarcerated in federal prison in West Virginia until May of 2025, by which time Child "will have lived separate from [her] for about 10 years." Appellant's App. Vol. II p. 43. Put simply, Mother's and Father's "prior criminal history, drug and alcohol abuse, history of neglect, [and] failure to provide support" suggest that the conditions leading to Child's removal and placement in relative care will not be remedied. *A.F. v. Marion Cnty. Off. of Fam. and Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*.

[19] Moreover, Mother's and Father's failure to complete reunification services supports the juvenile court's determination on this issue. For example, "the services offered to the parent and the parent's response to those services can also be evidence demonstrating that conditions will be remedied." *K.E. v. Ind. Dep't of Child. Servs.*, 39 N.E.3d 641, 647 (Ind. 2015). Here, however, the services offered, and Mother's and Father's responses to them, indicate the opposite. Father had only "marginally participat[ed] in reunification services" after failing to complete the Father's Engagement Program, missing 160 drug screenings, testing positive for illegal substances on multiple occasions, and not completing therapeutic visits with Child. Appellant's App. Vol. II pp. 41–42. Likewise, Mother "did not successfully engage in reunification services" when she failed to complete a substance-abuse program and therapeutic visits. Appellant's App. Vol. II p. 33. Therefore, we cannot say the juvenile court's determination on this issue regarding either parent is clearly erroneous.

[20] Although Mother and Father both additionally argue that the evidence is insufficient to support the juvenile court's conclusion that a continued parent-

child relationship threatens Child's wellbeing, we need not review the sufficiency of the evidence to support this conclusion. We have already determined that the evidence is sufficient to support the juvenile court's determination regarding the likelihood that the conditions resulting in removal will not be remedied. *See In re A.K.*, 924 N.E.2d at 220.

[21] Finally, Mother and Father each dispute the juvenile court's conclusion that termination is in Child's best interests. When considering whether termination of parental rights is in a child's best interests, we look at "the totality of the evidence." *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). Here, the totality of the evidence supports the juvenile court's conclusion. Throughout the CHINS case, Mother and Father continued to engage in criminal behavior, failed to complete reunification services, and continued to abuse illegal substances. Additionally, Matt, the FCMs, and the GAL working with Mother, Father, and Child "believe it is in [Child]'s best interest to be adopted by his current placement[,]" where "he is able to express himself[,]" he has "a home with stability[,]" "[h]e feels safe[,]" and "they meet all of his needs." Tr. Vol. II pp. 22, 115–16.

[22] Notably, the Indiana Supreme Court has consistently relied on the recommendation of FCMs, court-appointed special advocates ("CASAs"), GALs, and other service providers when considering whether "a reasonable finder of fact could conclude based on clear and convincing evidence" that "the termination is in the best interests of" a child. *In re N.G.*, 51 N.E.3d at 1173; *see also K.T.K v. Ind. Dept. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225,

1235–36 (Ind. 2013) (relying on testimony from the FCM, GAL, and CASA to determine that termination of parental rights served the children's best interests). "[C]hildren have an interest in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, continuous relationships." *K.T.K.*, 989 N.E.2d at 1230. Therefore, we cannot say that the juvenile court's decision is clearly erroneous.

[23] The judgment of the juvenile court is affirmed.

Pyle, J., and Tavitas, J., concur.