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 B.C. and P.P. (Minor Children), and

H.C. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner

December 20, 2021

Court of Appeals Case No. 21A-JT-1591

Appeal from the Fountain Circuit Court

The Honorable Stephanie Campbell, Judge

Trial Court Cause Nos. 23C01-2012-JT-90, - 91

Crone, Judge.

Case Summary

[1] H.C. (Father) appeals the involuntary termination of his parental rights to his minor children B.C and P.P. (collectively the Children). We affirm.

Facts and Procedural History

[2] B.C. was born in December 2012, and P.P. was born in February 2018. The parents of both children are K.P. (Mother) and Father.[1] Father and Mother lived together after B.C.'s birth until December 2014, when Father was incarcerated. The Indiana Department of Child Services (DCS) became involved with the parents in November 2015, when DCS filed a child in need of services (CHINS) petition alleging that B.C. was a CHINS due to Mother's methamphetamine use. Mother consented to B.C.'s out-of-home placement, and DCS dismissed the petition. Father was eventually released from incarceration and was reunited with Mother and B.C. prior to P.P.'s birth. Father was incarcerated again in July 2018.[2]

[3] On July 31, 2019, DCS filed petitions alleging that the Children were CHINS. Specifically, DCS alleged that Mother and other adults living in the household were using methamphetamine and other illegal substances. Hair follicle drug screens conducted on the Children tested positive for methamphetamine, and

[1] Mother's parental rights were also terminated, but she is not a party to this appeal. Accordingly, we will provide the facts most relevant to the termination of Father's parental rights.

[2] The record reveals that Father was arrested and/or convicted at least twenty times between 2001 and 2019.

P.P.'s screen also tested positive for hydrocodone. In addition, an adult living in the home had a substantiated prior conviction for child molesting.

[4] The trial court held a combined initial and detention hearing on August 1, 2019, after which the Children were removed from the home. At the time of removal, Father was incarcerated in the Indiana Department of Correction (DOC). In September 2019, following a factfinding hearing, the Children were adjudicated CHINS. The trial court noted that Father remained incarcerated with an earliest possible release date of July 23, 2020.

[5] In December 2019, the trial court held a dispositional hearing relating to both parents. The trial court noted at the time of the hearing that Father "had not maintained a meaningful role in the [C]hildren's lives, as he had been incarcerated off and on for a majority of the time since they were born." Appealed Order at 4. At the conclusion of the hearing, the trial court entered its dispositional order. In relevant part, Father was ordered to do the following: maintain a safe and stable home, secure a legal and stable source of income, establish paternity for B.C., not use, consume, manufacture, trade, distribute, or sell any illegal controlled substances, obey the law, participate in various specific programs while incarcerated, and, to the extent those programs are not available while incarcerated, participate in those programs in the future. During his incarceration, Father participated in weekly phone calls with the Children that were supervised by DCS. Those telephone visits were awkward but "improved over time," and Father was able to engage in "more appropriate" interactions with the Children. Tr. Vol. 2 at 21.

[6] Father completed his sentence and was placed on work release on September 14, 2020. Immediately upon his release, DCS made referrals for services so that Father could work toward reunification with the Children. At the time, Father knew that Mother, although having made earlier strides in substance abuse treatment, had relapsed and was not on track toward reunification with the Children. However, Father did not complete any services because after being out only twenty-two days, he was arrested and reincarcerated for resisting law enforcement and failure to comply with community corrections. On December 8, 2020, the trial court held a permanency hearing. Due to Mother's continued drug use and Father's incarceration, the court found that "[n]either parent is available, stable, and willing to provide for the [C]hildren's needs at this time." Ex. Vol. 3 at 89. Consequently, the trial court changed the Children's permanency plan to adoption.

[7] DCS filed petitions to terminate both Mother's and Father's parental rights on December 14, 2020. Following a factfinding hearing, the trial court issued detailed findings of fact and conclusions thereon determining that DCS had established the following by clear and convincing evidence: (1) there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside the home will not be remedied by either parent; (2) there is a reasonable probability that continuation of the parent-child relationship between each parent and the Children poses a threat to the Children's well-being; (3) termination of the parent-child relationship between each parent and the Children is in the Children's best interests; and (4)

DCS has a satisfactory plan for the Children's care and treatment, which is adoption. Accordingly, the trial court terminated both Mother's and Father's parental rights. Only Father now appeals.

Discussion and Decision

[8] "The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities." *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). "[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed." *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

> (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 that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[9] "We have long had a highly deferential standard of review in cases involving the termination of parental rights." *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

> We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court's judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous.

Id. at 92-93 (citations omitted). "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

Section 1 – Clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability of unchanged conditions.

[10] Father first challenges the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the Children's removal from and continued placement outside of his care will not be remedied.[3] In determining whether there is a reasonable probability that the conditions that led to the Children's removal and continued placement outside the home will not be remedied, courts engage in a two-step analysis. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, the court "must ascertain what conditions led to their placement and retention in foster care." *Id*. Second, the court determines "whether there is a reasonable probability that those conditions will not be remedied.'" *Id*. (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). "A pattern of unwillingness to deal with parenting problems and to cooperate with those

[3] Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Accordingly, we address only the evidence pertaining to 4(b)(2)(B)(ii).

providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Off. of Family & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS "need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change." *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[11] Here, the Children were initially removed from the home due to Mother's methamphetamine and hydrocodone use as well as the drug use of other adults that were living in the household. At the time of removal, both the Children tested positive for controlled substances on hair follicle screens. Father was incarcerated at the time of removal and was unable to provide the Children with housing or necessary care.

[12] The record reveals that, at the time of the termination hearing, virtually nothing had changed. Father was again incarcerated. Indeed, Father completed an earlier sentence and was placed on work release in September 2020, at which time DCS made referrals for Father to participate in services allowing him to work toward reunification with the Children. However, within twenty-two days of his release, Father committed a new criminal offense and was reincarcerated. As noted by the trial court, at the time of his new offense, Father "was not only aware that his children were under wardship of DCS, but [he] was also aware that [Mother] had relapsed and was not on track for reunification." Appealed Order at 6. Nevertheless, Father chose to commit an additional criminal offense

that placed him back in jail. Father's behavior demonstrated that he "prioritized his own situation and emotions over the needs of his children, who were reliant on him to be a present and available parent for them." *Id.* As aptly observed by the trial court, Father's "history of criminal activity demonstrates that his disregard for the law has been a defining characteristic of the previous twenty years for him." *Id.* at 6. Father's recent behavior, coupled with his extensive criminal history, demonstrates a habitual pattern of conduct indicative of a substantial probability of future neglect or deprivation.

[13] Father points to evidence that demonstrates that he loves the Children and has tried to maintain his parental relationship despite his incarceration, i.e., he consistently requested contact with the Children and wrote letters to them. However, as noted by the trial court, Father's "choices to engage repeatedly in criminal activity illustrate that while he loves his children, he cannot regulate his behavior enough to provide what they need." *Id.* Our courts have long recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *K.T.K.*, 989 N.E.2d at 1235-36. Clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that led to the Children's removal and continued placement outside Father's care will not be remedied.

Section 2 – Clear and convincing evidence supports the trial court's conclusion that termination of Father's parental rights is in the Children's best interests.

[14] Father also challenges the trial court's conclusion that termination of the parent-child relationship is in the best interests of the Children. We note that in determining the best interests of a child, the trial court is required to look beyond the factors identified by DCS and to the totality of the evidence. *McBride v. Monroe Cnty. Off. of Fam. & Child.*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the child, and the court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id*. Moreover, the recommendations of both the case manager and 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 a child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[15] DCS Family Case Manager Susan Snedeker opined that termination of Father's parental rights was in the best interests of the Children. She testified that she had seen no change in Father's criminal behavior or his aggression since the Children's removal, and he had given her no reason to believe that he could ever provide the Children with a safe or stable home environment. Snedeker stated that the Children were doing "really well" in their pre-adoptive

placement and that they had already "waited too long" for the stability and consistency they deserve. Tr. Vol. 2 at 18-19.

[16] Similarly, court-appointed special advocate Lisa Galloway stated that she believed that termination of Father's parental rights was in the best interests of the Children. Galloway testified that neither parent was in the position to provide a stable home for the Children and that, based upon her knowledge of the parents over the course of the case, she did not believe that there was any hope that Father or Mother would "change their pattern of behavior." *Id*. at 30. She stated that the Children are "doing wonderful in their current placement" and that adoption by that placement was in the Children's best interests moving forward. *Id.* at 29. This evidence is more than sufficient to support the trial court's conclusion that termination of Father's parental rights is in the Children's best interests. We affirm the trial court's termination order.

[17] Affirmed.

Bradford, C.J., and Tavitas, J., concur.