

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
O.P. (Minor Child) and S.P.
(Father)

S.P. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

April 18, 2022

Court of Appeals Case No.
21A-JT-1877

Appeal from the
Sullivan Circuit Court

The Honorable
Robert E. Hunley, II, Judge

Trial Court Cause No.
77C01-2003-JT-11

Vaidik, Judge.

Case Summary

- [1] S.P. (“Father”) appeals the termination of his parental rights to his daughter. We affirm.

Facts and Procedural History

- [2] R.S. (“Mother”) and Father are the biological parents of O.P. (“Child”), who was born in July 2015.¹ In January 2015, shortly after Father turned eighteen and about six months before Child was born, Father was charged with Level 4 felony burglary for breaking into a home on January 5 (“the burglary case”) and Level 5 felony criminal recklessness for shooting a gun into a house on January 6 (“the criminal recklessness case”). Father pled guilty to both charges, had other charges dismissed, and was offered a deferral to participate in Adult Mental Health (AMH) court.
- [3] In October 2015, a couple of months after Child was born, Father was charged with Level 5 felony battery resulting in serious bodily injury for hitting his ex-girlfriend and fracturing her left eye socket. Father and the State entered into a plea agreement under which Father pled guilty to a lesser-included offense of Level 6 felony battery resulting in moderate bodily injury, the State dismissed another cause number,² and the trial court sentenced Father to two years, with

¹ Mother does not appeal the termination of her parental rights, so we focus on the facts relevant to Father.

² In that cause number, Father was charged with Level 6 felony attempted obstruction of justice and Class A misdemeanor invasion of privacy.

one year on home detention and one year on probation.³ In November 2015, the State moved to revoke Father's AMH court deferral in the burglary and criminal recklessness cases. The court revoked Father's deferral and sentenced him to concurrent terms of six years in the burglary case and three years in the criminal recklessness case, to be served as a direct placement on home detention.

[4] In August 2016, the State moved to revoke Father's direct placement on home detention in the burglary and criminal recklessness cases for, among other things, removing his GPS tracking device. The State also charged Father with Level 6 felony escape for removing the device. In September, the parties reached an agreement under which the State dismissed the escape case and the trial court revoked Father's direct placement and ordered him to serve the balance of his sentence in the Indiana Department of Correction (DOC). Father was released from the DOC in October 2017, when Child was two years old.

[5] About two months after he was released, on December 27, Father robbed a bank. The State charged Father with Level 5 felony robbery and being a habitual offender. Father and the State entered into a plea agreement under which Father pled guilty to Level 5 felony robbery, the State dismissed the habitual-offender charge, and the trial court sentenced Father to five years.

³ Father had other convictions around this time. In September 2015, Father was charged with Class A misdemeanor operating while intoxicated. He pled guilty and was sentenced to one year suspended to probation. In October 2015, Father was charged with Class C misdemeanor operating while intoxicated. He pled guilty and was sentenced to sixty days.

Father is now serving this sentence in the DOC, with a projected release date of May 7, 2022 (at which time Child will be almost seven years old).⁴

[6] In June 2018, while Father was incarcerated for robbery, the Department of Child Services (DCS) filed a petition alleging Child was a child in need of services (CHINS) because Mother used drugs and abused Child and Father was incarcerated and couldn't care for Child. Child was first placed with a relative but in October 2018 was placed with K.C., who knew Child because she had dated Mother from 2015 to 2017 (Child has lived with K.C. ever since). The trial court found Child was a CHINS and ordered Father to maintain contact with DCS and secure income and safe and stable housing.

[7] In March 2020, DCS petitioned to terminate Mother's and Father's parental rights to Child. A fact-finding hearing was held in May and June 2021. Child was five but about to turn six, and Father was twenty-four. At the hearing, Father acknowledged he had been incarcerated for all but about six months of Child's life. Tr. p. 218. Father testified that although he had done some video visits with Child at "the beginning of [his] incarceration," he hadn't done any recently because they were "harder" to do. *Id.* at 222. However, he said he talked to Child on the phone about once a month when she visited his sister.

⁴ Father testified at the termination hearing his release date was February 11, 2022, but the DOC's website now says May 7, 2022.

[8] Father also testified he committed the crimes because of “very bad” drug and alcohol problems. *Id.* at 203. Father said DCS didn’t offer him any services while he was incarcerated and that a DCS case worker had visited him only once. As for services offered by the DOC, Father said that because he had completed a substance-abuse program during his first stint in prison, he was ineligible to complete another one. When asked if the prison offered any parenting classes, Father responded, “Not that I know of or been informed of.” *Id.* at 208. Father said he was eligible for a program called “FLOSS” but he “didn’t really feel like it was for [him] because it’s a character-based program” and substance abuse was his problem. *Id.* at 208, 219.

[9] K.C. testified Child was non-verbal when she was placed with her in October 2018 but had since undergone services and was now “a complete[ly] different kid.” *Id.* at 102. K.C. said Father’s contact with Child from 2015 to 2017 was “hit and miss” and that he had seen Child only “a couple of times” during that period. *Id.* at 112. She said that since Child was placed with her, Father had not seen Child in person but talked to her on the phone when she visited his sister. *Id.* at 113. She added that Father had called her house just once to talk to Child. Finally, K.C. testified she was “absolutely” willing to adopt Child if Mother’s and Father’s parental rights were terminated. *Id.* at 104.

[10] Joni Garrett, the DCS Family Case Manager (FCM) assigned to the case since the CHINS case was opened in June 2018, testified DCS didn’t offer Father any services because he was in the DOC. She said it is in Child’s best interests for Father’s parental rights to be terminated because he “is incarcerated at this time

and has a history of being incarcerated during [Child's] life and his adult life" and Child is "thriving" in K.C.'s home. *Id.* at 150, 151. Cindy Slater, Child's Court Appointed Special Advocate (CASA), also testified it is in Child's best interests for Father's parental rights to be terminated because Child is happy and "thriving" in K.C.'s home. *Id.* at 195.

[11] In August 2021, the trial court issued an order terminating Mother's and Father's parental rights.

[12] Father now appeals.

Discussion and Decision

[13] Father contends DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[14] A petition to terminate parental rights must allege, 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.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

[15] Father first challenges the trial court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal or the reasons for placement outside the home will not be remedied.⁵ In making this

⁵ Father also challenges the trial court’s conclusion there is a reasonable probability the continuation of the parent-child relationship poses a threat to Child’s well-being. But because we affirm the court’s conclusion there is a reasonable probability the conditions resulting in Child’s removal or the reasons for placement outside the home will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (noting Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements), *trans. denied*.

determination, the trial court engages in a two-step analysis. First, the court must determine what conditions led to the child's placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The court must judge the parent's fitness to care for his child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[16] Father's pattern of criminal behavior supports the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied. Father's criminal behavior started in January 2015, shortly after he turned eighteen and about six months before Child was born. He pled guilty to two felonies and was sent to AMH court. But neither Child's birth nor the opportunity to participate in AMH court (and thus avoid incarceration) deterred Father. After Child was born, Father committed felony battery, was kicked out of AMH court, was placed on home detention, and then violated the conditions of home detention by removing his GPS tracking device. In September 2016, Father was sent to prison for the first time. Father was released from prison in October 2017, when Child was two years old. Two months later, in December 2017, Father robbed a bank. He is now serving his second prison sentence and is set to be released on May 7, 2022. As Father acknowledged at the hearing, he has been incarcerated or on home detention for nearly all of Child's life.

[17] Although DCS didn't offer Father any services while he was incarcerated, he didn't ask for any either. As the trial court found, Father was "not very active reaching out to DCS or the Courts." Appellant's App. Vol. II p. 145; *see also In re J.W., Jr.*, 27 N.E.3d 1185, 1190 (Ind. Ct. App. 2015) (recognizing that to terminate parental rights, the DCS has no obligation to plead and prove that services have been offered to the parent to assist in fulfilling parental obligations), *trans. denied*. Father had video visits with Child at the beginning of his incarceration but hadn't had any recently. Father also didn't participate in any services at the DOC. He claimed he was ineligible for a second round of substance-abuse treatment, wasn't aware of any parenting classes, and didn't take a character-based class because he didn't think it would be helpful.

[18] Father relies on *K.E. v. Indiana Department of Child Services*, 39 N.E.3d 641 (Ind. 2015), but this case is easily distinguishable. In *K.E.*, the father was incarcerated for a crime he committed before his child was born. During his incarceration, the father made great strides to address his parenting skills, including completing twelve programs and attending Alcoholics Anonymous and Narcotics Anonymous. The father also created a bond with his child through visits at the prison and nightly phone calls. Here, in contrast, Father continued to commit crimes even after Child was born. Father talks to Child on the phone only about once a month and has completed no programs in the DOC.

[19] The evidence supports the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied.

[20] Father next challenges the trial court's conclusion termination is in the best interests of Child. This is "[p]erhaps the most difficult determination" a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). The court must look at the totality of the evidence and subordinate the parent's interests to those of the child. *Id.* Central among these interests is the child's need for permanency. *Id.* In addition, a recommendation to terminate parental rights by both the case manager and child advocate, together with evidence the conditions resulting in removal or the reasons for placement outside the home will not be remedied, is enough to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied.*

[21] Both FCM Garrett and CASA Slater testified termination is in the best interests of Child because Father has been incarcerated for nearly all of Child's life and she is thriving in K.C.'s home. Although Father claimed to have a "bond" with Child, the trial court found it couldn't have been "much" of one given "the frequent amount of time he has not had contact with [her] either willingly or by incarceration." Appellant's App. Vol. II p. 145. On the other hand, as Father himself recognized, K.C. and Child have a special bond. *See* Tr. p. 219.

[22] Father relies on *In re G. Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh'g denied*, but again this case is easily distinguishable. In *G. Y.*, an incarcerated mother committed a crime before her child was born, did not commit any other crimes, and took many positive steps while incarcerated to better herself as a person and parent.

As already explained, Father committed crimes after Child was born. While incarcerated, he has taken few, if any, steps to improve himself as a person and parent. The trial court was not required to wait any longer on Father.

[23] The evidence supports the trial court's conclusion termination is in the best interests of Child.

[24] Affirmed.

Crone, J., and Altice, J., concur.