

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination
of the Parent-Child Relationship
of M.F. (Minor Child)

and

A.F. (Father)

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

September 19, 2023

Court of Appeals Case No.
23A-JT-385

Appeal from the Madison Circuit
Court

The Honorable T. Grey Chandler,
Magistrate

Trial Court Cause Nos.
48C02-2208-JT-120
48C02-2206-JT-81

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

[1] In February of 2021, the juvenile court determined that M.F. (“Child”) was a child in need of services (“CHINS”) based on an admission from Child’s mother, W.B. (“Mother”), and ordered him removed from her care.¹ The Department of Child Services (“DCS”) unsuccessfully attempted to locate A.F. (“Father”), but could not, and placed Child into foster care. Father was incarcerated in December of 2021, and the juvenile court entered a dispositional decree in which it ordered Father to participate in certain services and comply with certain requirements; however, Father failed to comply with portions of that decree. Ultimately, the juvenile court terminated Mother’s and Father’s parental rights to Child. Father challenges that termination, arguing that the juvenile court made an improper finding and that the evidence fails to support termination. We affirm.

Facts and Procedural History

¹ Mother does not participate in this appeal.

- [2] Child was born to Mother and Father on February 22, 2020. Sometime in 2020, Child was adjudicated to be a CHINS, but that case was closed in October of 2020. In February of 2021, DCS filed a new CHINS petition in which it alleged that, among other things, it had received a report that Child had been a victim of child abuse and that Mother had appeared virtually for a court proceeding while under the influence. Mother, who had a substantial history of drug-related offenses, subsequently tested positive for illegal substances. DCS also learned that Mother's living situation had become unstable and unsuccessfully attempted to contact Father. DCS also discovered that Father had pending criminal charges for multiple drug-related offenses. Consequently, and after Mother had admitted that Child was a CHINS, the juvenile court approved Child's removal and ordered his placement in foster care.
- [3] In September of 2021, the juvenile court scheduled an initial hearing for Father. Father was incarcerated in the Madison County Jail and failed to appear for the hearing. The juvenile court rescheduled the initial hearing for November of 2021, at which time Father appeared and waived his right to a fact-finding hearing.
- [4] In December of 2021, Father was incarcerated and remained so at the time of the termination fact-finding hearing on August 3, 2022. On December 8, 2021, the juvenile court entered a dispositional decree in which it ordered Father to contact the family case manager ("FCM") every week; notify the FCM of any changes in address, household composition, employment, or telephone number

within five days of change; and participate in individual counseling. DCS offered Father supervised visitation with Child, but Father declined to participate until he got his substance-abuse issues under control. Despite the decree, Father failed to contact the FCM every week; notify the FCM of changes of address, employment, or telephone number; and schedule appointments with service providers.

[5] Prior to December of 2021, Father had accumulated a significant criminal history and has been in and out of incarceration for the entirety of Child's life. During Child's life, Father has been charged with and convicted of failing to return to lawful detention, resisting law enforcement, possession of methamphetamine, unlawful possession of a syringe, possession of a narcotic drug, possession of a controlled substance and paraphernalia, escape, possession of marijuana, unlawful possession of a legend drug, possession of cocaine, and carrying a handgun without a license.

[6] Father has had opportunities to address his substance-abuse issues by participating in drug court through the extensive out-patient treatment program at the DOC. However, Father left that program unsuccessfully after three months because "they were controlling [his] life." Tr. Vol. I p. 70. Additionally, Father was also on work release at one point, but was removed from that program "[d]ue to not returning to the facility." Tr. Vol. I p. 82. Father was incarcerated at the time of the initial termination hearing and had an expected release date of September 29, 2024. However, Father has a job waiting for him at "Man 4 Man ministries" and plans to live at "either a half

way house or Christian Center until [he] could get on [his] feet.” Tr. Vol. I pp. 67–68.

[7] Father has not seen Child since 2021. According to FCM Ashley Taylor, Father does not have a bond with Child due to his “pattern of incarceration” and DCS “would have to do some intense services before [recommending permanency with Father] would even be an option.” Tr. Vol. I p. 86. FCM Taylor testified that Child is “so bonded to [his] foster family that it would just be detrimental” to him for DCS to recommend permanency with Father. Tr. Vol. I p. 86. As a result, DCS recommended termination of the parent-child relationship so that permanency for Child can be established by adoption by his foster family.

[8] Similarly, court-appointed special advocate (“CASA”) Tori Kavich testified that “it would be in [Child]’s best interest to be adopted [...] to remain in the home where he is[.]” Tr. Vol. I p. 41. CASA Kavich further testified that, at the time of the termination hearing, she had known Father for four-and-a-half years due to the two CHINS cases relating to Child and her serving as the CASA for Child’s sibling. CASA Kavich also noted that the foster family is “the only family [Child] knows” and “at his age and given the amount of time he has been with them, it would be a disservice to [him] to achieve permanency by any means other than adoption by the placement family.” Appellant’s App. Vol. II p. 7. The juvenile court found that “both parents’ behavior throughout both the CHINS case and this termination action show that each is currently unwilling or unable to provide [Child] a safe and stable home, with stable

parenting, now or in the near future” and it is “in the Child’s best interest that both Mother’s and Father’s parental right be terminated[.]” Appellant’s App. Vol. II pp. 7–8.

Discussion and Decision

[9] 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.*

[10] 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).

[11] Indiana Code section 31-35-2-4(b)(2) provides that to prove that the termination of a parent’s parental rights is warranted, the State must show:

(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.

Father claims that the juvenile court made an improper factual finding, and that the termination under subsections (B) and (C) is unsupported by the evidence.

A. Father's Factual Challenge

[12] To start, Father challenges one of the juvenile court's findings of fact. We will not set aside a juvenile court's findings of fact unless they are clearly erroneous. *In re A.W.*, 62 N.E.3d 1267, 1272 (Ind. Ct. App. 2016). Unchallenged findings must be accepted as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

Finding 18 states:

The Department and the CHINS court have been in [Child]'s life for almost two years. While Father has been incarcerated for much of that time, he had opportunity for services during his months of liberty/quasi-liberty. The Court does not accept as proven Father's assertion that he was powerless to engage in service[s] during the CHINS case that would allow for reunification with him.

Appellant's App. Vol. II p. 7. Father argues that the only service DCS offered was supervised visitation, which he claims to have declined because he had

wanted to address his substance-abuse issues first, and there is no evidence that DCS offered other services or that he declined such services. We disagree.

[13] While DCS may only have offered supervised visitation to Father, Father acknowledged at the termination hearing that he had agreed with DCS that he would complete his requirements through the drug court. Father had already been engaged in extensive out-patient programming through the DOC. Further, Father had participated in the DOC's work-release program while incarcerated. Father, however, failed to complete the extensive out-patient treatment, withdrew from drug court, and his participation in the work-release program was terminated after he had failed to return to the facility. Thus, we cannot say that Finding 18 is clearly erroneous.

B. Remedy of Conditions for Removal

[14] When considering whether the conditions leading to a child's removal will be remedied, the trial court makes a two-step inquiry. First, the juvenile court identifies the conditions that led to removal or continued removal. *K.T.K. v. Ind. Dep't of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1231 (Ind. 2013). Second, the juvenile court determines whether a reasonable probability exists that the conditions justifying a child's continued placement outside of the home will not be remedied. *Id.* In making the second inquiry, the juvenile court must evaluate a parent's fitness to care for his child at the time of the termination hearing and consider evidence of changed conditions; however, the juvenile court must also "evaluate the parent's habitual patterns of conduct to determine

the probability of future neglect or deprivation of the child.” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*.

[15] The record suggests a reasonable probability Father will not remedy the conditions that led to Child’s removal. For example, Father has a significant criminal history and has frequently been incarcerated. He will also be involved with probation after his release, and he has a history of probation violations. Father’s habitual conduct indicates that “there is a substantial probability of future neglect of deprivation” when it comes to his care of Child. *Bester*, 839 N.E.2d at 152. We cannot say that the juvenile court’s conclusion that the reason for placement outside of the home will not be remedied is clearly erroneous. *In re E.M.*, 4 N.E.3d at 642.

[16] Father alleges that he was not responsible for the conditions that led to Child’s removal because Child was in Mother’s custody at the time; therefore, he cannot be charged with the acts or omissions that resulted in removal. That argument, however, is misguided. The initial reasons for M.T.’s removal in February of 2021 was Mother’s admission that Child was a CHINS due to her unstable housing and drug abuse and Father’s absence. Further, the trial court may also consider evidence that the conditions resulting in the child’s *continued* placement outside the home will not be remedied. *K.T.K.*, 989 N.E.2d at 1228. Child remained in foster care, in part, because of Father’s failure to complete services and his frequent incarceration. “A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no

reasonable probability that the conditions will change.” *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied*.

[17] Additionally, Father argues that incarceration is not a proper basis for termination. In making that argument, he directs our attention to *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009). In that case, the Indiana Supreme Court reversed the termination of an incarcerated mother’s parental rights, concluding that “there was no evidence [...] to show that permanency through adoption would be beneficial to [G.Y.] or that remaining as a foster care ward until he could be reunited with his mother would be harmful to [G.Y.]” *Id.* at 1265. That case, however, is distinguishable from this one. In *In re G.Y.*, the mother’s sole crime was that she delivered cocaine to a police informant one year before G.Y.’s birth and was arrested thirty-two months after the offense, when G.Y. was nearly two years old. *Id.* at 1258–59. Here, Father has an extensive involvement with the criminal-justice system after Child’s birth, including charges for possession of methamphetamine, resisting law enforcement, failure to return to lawful detention, and unlawful possession of a syringe. “[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.

[18] Father also attempts to support his argument by citing *In re J.M.*, 908 N.E.2d 191 (Ind. 2009). In that case, the parents were arrested for attempted dealing in methamphetamine; however, prior to their incarceration, both parents had had an ongoing relationship with J.M. *Id.* at 192. The parents’ release dates were

close to the termination fact-finding hearing and they had “fully cooperated” with DCS’s case plan, secured housing and employment, and otherwise made an effort to provide J.M. with permanency upon their release. *Id.* at 195. Here, however, the last time Father saw Child was in early 2021, Father declined to exercise supervised visitation prior to his incarceration, he failed to complete the extensive out-patient treatment, he withdrew from drug court, and he was terminated from the work-release program for failing to return to the facility.

[19] Further, Father argues that the fact he was incarcerated and failed to complete services should not be a basis for termination. Father’s argument is misplaced. The juvenile court determined that while Father has spent much of Child’s life incarcerated, he had “had opportunity for services during his months of liberty/quasi-liberty” and thus did not accept “Father’s assertion that he was powerless to engage in service[s] during the CHINS case that would allow for reunification[.]” Appellant’s App. Vol. II p. 7. Moreover, Father’s failure to participate in services was not the sole reason for termination; indeed, the juvenile court also highlighted Father’s extensive criminal history and the termination recommendations from CASA Kavich and FCM Taylor.

[20] Father also argues that his substance abuse does not warrant termination of his parental rights. While we have previously held that isolated drug use by itself does not warrant a child being adjudicated as a CHINS, Father admits that his drug “use was more than isolated and resulted in multiple periods of incarceration.” Appellant’s Br. p. 16; *see, e.g., D.S. v. Ind. Dep’t of Child Servs.*, 150 N.E.3d 292, 296 (Ind. Ct. App. 2020); *Ad.M v. Ind. Dep’t of Child Servs.*, 103

N.E.3d 709, 713–14 (Ind. Ct. App. 2018). Given Father’s admitted history of substance abuse, coupled with his failure to complete reunification services prior to and during his incarceration and the recommendations from CASA Kavich and FCM Taylor, we cannot say that the juvenile court’s determination that the conditions for Child’s removal and continued foster-care placement would not be remedied was clearly erroneous. *In re E.M.*, 4 N.E.3d at 642.

[21] In short, Father’s arguments are nothing but an invitation for us to reweigh the evidence, which we will not do. *In re N.G.*, 51 N.E.3d at 1170. Because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only to conclude that DCS established one of those subsections. Having concluded that the trial court’s decision that the conditions leading to Child’s removal was not clearly erroneous under subsection (B)(i), we need not reach Father’s argument under (B)(ii).

C. Best Interests of the Child

[22] 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). Importantly, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d at 648. Juvenile courts also “need not wait until the [child is] irreversibly harmed [...] before terminating the parent-child relationship.” *In re T.F.*, 743 N.E.2d at 773. Here, the totality of the evidence suggests that termination was in Child’s best interests.

[23] FCM Taylor testified that “intense services” would be required before DCS would consider recommending permanency with Father and, as a result, recommended termination. Tr. Vol. I p. 86. Likewise, CASA Kavich recommended termination because the “it would be a disservice to [Child] to achieve permanency by any means other than adoption by [his] placement family[,]” as that is “the only family the [Child] knows[.]” Appellant’s App. Vol. II p. 7. This evidence supports the trial court’s decision, as Indiana courts have long relied on the recommendations of CASAs, FCMs, 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. “[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.

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

Riley, J., and Weissmann, J., concur.