## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of G.D.S. (Minor Child),

G.L.S. (Father),

*Appellant-Respondent*,

v.

Indiana Department of Child Services,

*Appellee-Petitioner*.

July 14, 2021

Court of Appeals Case No. 21A-JT-76

Appeal from the Scott Superior Court

The Honorable Marsha Owens Howser, Judge

Trial Court Cause No. 72D01-2001-JT-8

**Brown, Judge.**

[1] G.L.S. ("Father") appeals the involuntary termination of his parental rights to his child, G.D.S. We affirm.

## *Facts and Procedural History*

[2] G.D.S. was born in October 2008. In October 2018, the Department of Child Services ("DCS") filed a petition under cause number 72D01-1810-JC-131 ("Cause No. 131") alleging G.D.S. was a child in need of services ("CHINS"), G.D.S.'s mother was deceased, and Father was incarcerated in Ohio as of the date of filing. The petition alleged Father had taken G.D.S. to a medical center for wheezing and shortness of breath, disagreed with the diagnosis of mild to moderate respiratory distress and recommendation for treatment, and removed G.D.S. without obtaining a prescription. The petition also alleged: Father subsequently refused to allow Family Case Manager Alex Peacock ("FCM Peacock") to see G.D.S.; FCM Peacock learned G.D.S. had not been to his elementary school for several days and the family had not resided at their last known address for over a month; FCM Peacock located G.D.S. at the home of his maternal grandmother; G.D.S. told FCM Peacock that he, Father, and Father's girlfriend had been living at a motel but ran out of money and that Father prevented him from going to school; and that G.D.S.'s maternal grandmother shared that she was afraid the school would not allow G.D.S. to go home with her and that he needed medical care but she was not able to take him. That same day, the court held a hearing at which Father did not appear, and it removed and placed G.D.S. into relative care.

[3] On November 8, 2018, the court held a hearing at which Father appeared, and it entered a denial on his part. On February 26, 2019, the court held a hearing at which Father was not present but was represented by counsel, and it adjudicated G.D.S. to be a CHINS and found that it was in the child's best interests to be removed from the home. It found that G.D.S. had not been regularly attending school, G.D.S. and Father had been staying in a hotel, and Father refused to provide G.D.S. with necessary food, clothing, shelter, medical care, education, and supervision. On April 30, 2019, following a hearing at which Father failed to appear, the court entered a dispositional order which awarded wardship of G.D.S. to DCS and ordered Father to maintain safe and stable housing, maintain a stable source of income, obey the law, complete a parenting assessment and all recommendations, attend all scheduled visitation, and participate in Fatherhood Engagement Services.

[4] Following a permanency hearing at which Father failed to appear, the court changed the permanency plan to termination of parental rights and adoption on December 16, 2019, and found Father had not complied with the case plan or reached out to the family case manager to attempt to engage in services or visitation or provide a current address. In January 2020, DCS filed a motion to terminate Father's services under Cause No. 131, which the court granted, and a termination petition under cause number 72D01-2001-JT-8. On August 18, 2020, the court held a hearing at which the parties stipulated to the admission of the chronological case summary in the CHINS case as an exhibit.

[5] On December 3, 2020, the court held a hearing and issued a twenty-three page termination order in which it found that Father was never employed and struggled with homelessness during the CHINS proceedings, was incarcerated from July 16, 2019, to September 4, 2019, and had positive drug tests in October, November, December 2019, and in January 2020. It detailed DCS's attempts to engage Father and Father's unwillingness to engage in services. It indicated that, from July 2019 through October 2019, G.D.S. was in and out of residential placements due to emotional and behavioral issues and that Father expressed during this time that the accusations that predicated the placements were fabricated and was dismissive and unreceptive to "the reality of" G.D.S.'s need for services. Appellant's Appendix Volume II at 135. It further found that on October 7, 2019, Father was informed at a Child and Family Team Meeting of a diagnosis for G.D.S. of Reactive Attachment Disorder and of recent progress with healthy coping skills and emotional expression, and he expressed beliefs that G.D.S. did not need therapy and a desire that he not take prescribed medications despite his severe emotional and behavioral issues.

[6] The order concluded that, due to Father's lack of participation in services and refusal to improve his ability to provide a proper home for G.D.S., there was a reasonable probability that the conditions that led to G.D.S.'s removal and continued placement outside of the home would not be remedied; there was a reasonable probability that the parent-child relationship posed a threat to G.D.S.'s well-being; and that termination was in the best interests of G.D.S.

## *Discussion*

[7] In order to terminate a parent-child relationship, DCS is required to allege and prove, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We 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. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). 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. *Id.* We give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *Id.* "Because a case that seems close on a 'dry record' may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence." *Id.* at 640. The involuntary termination statute is written in the disjunctive and requires proof of only one of the circumstances listed in Ind. Code § 31-35-2-4(b)(2)(B).

[9] Father argues that DCS failed to meet its burden in proving that the circumstances resulting in removal were unlikely to be remedied. He asserts he had been living in the same home for six months at the time of the termination hearing, he participated in "all of the visitation he was made aware of," and that, while he expressed "some skepticism" regarding how and when G.D.S. developed mental health issues, he expressed a willingness to discuss the issues and participate in treatment. Appellant's Brief at 15. He admits that he did not complete all services but contends that his efforts demonstrated a willingness to participate and improve conditions for G.D.S. and that he demonstrated the ability to maintain a suitable home and a desire to provide a healthy environment. DCS maintains that G.D.S. was removed due to Father leaving him with his maternal grandmother without providing proper medical care or clothing and there "being needles and people shooting heroin in the home." Appellee's Brief at 19. It argues that Father's failure to fully participate in

services and therapy for over two years supports the court's determination, Father did not make any real improvements that would help fulfill parenting obligations, and he continued to engage in criminal activity and struggled with substance abuse after G.D.S.'s removal.

[10] In determining whether the conditions that resulted in a child's removal will not be remedied, we engage in a two-step analysis. *See E.M.*, 4 N.E.3d at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent's fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of future behavior. *Id.* 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 N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent's drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by

DCS and the parent's response to those services. *Id.* Where 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 not improve. *Id.*

[11] To the extent Father does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

[12] The record reveals that FCM Peacock testified that, upon locating G.D.S. left by Father at his maternal grandmother's home, he did not feel comfortable leaving him as there were "people residing . . . that were shooting up heroin[] in the back bedroom" and "needles in the home." Transcript Volume II at 30. Family Case Manager Supervisor Caitlin Busick testified that services were submitted for Father, including a referral for visits which was active when she received the case, and the "majority of the case [was] spent . . . trying to locate [Father] and really engage him with the child and family team meeting and services." *Id.* at 42. She discussed the results of Father's five drug screens while she was supervisor and the recommendations of his substance abuse assessment in November 2019. She indicated she was not aware of Father providing proof of employment or stable housing to herself or Family Case Manager Robert Williams, who was assigned to the case on April 1, 2019, or of Father making any efforts to complete the six sessions needed to reinstate visitation, testified that she did not think he would remedy the problems that led to removal, and

stated Father "had a pattern of not engaging with services and not really participating fully . . . for the well-being of [G.D.S.] throughout the life of the case." *Id.* at 48. When asked why DCS wanted to terminate Father's services, Family Case Manager Shane Floyd, who was assigned to the case on November 19, 2019, answered that Father was "just really sporadic in doing anything with DCS" and that Father told him "the only reason he wanted [G.D.S.] was to get [G.D.S.'s] [social security] check, that way him [sic] and [G.D.S.] [would] just sit around the house together." *Id.* at 57-58. He discussed the results of Father's drug screens in December 2019 and January 2020, and he testified that he never received any type of proof of employment from Father and that Father never obtained stable or appropriate housing. He indicated he did not think that the problems leading to removal would be remedied and stated: "we have had this case for approximately two years, and we are right where we w[ere] when we began." *Id.* at 65. Therapist Angel Hood indicated that, during the times she met with Father, he "was pretty resistant to the idea that [G.D.S.] was struggling as much as I had observed at that point." *Id.* at 75. The record further reveals that Father testified that he had never used drugs, had a vehicle the "whole time of this process . . . before [G.D.S.] was removed," and had visited only once with G.D.S. in December 2018. *Id.* at 103. We note that the parties stipulated at the hearing to the admission of fifty-seven pages of provider referral documents, with referrals ranging from November 8, 2018, to March 11, 2020; lab results of Father's six positive drug screens; and a chronological case summary under cause number 72C01-1907-F6-324 that contained entries indicating that, on July 16, 2019,

Father was charged with battery against a public safety official as a level 6 felony and two counts of resisting law enforcement as level A misdemeanors, and that, on March 2, 2020, he pled guilty to the first charge pursuant to an agreement, the other two charges were dismissed, and he was sentenced to 545 days with 51 days jail credit and 443 days suspended. In light of the unchallenged findings and evidence set forth above and in the record, we cannot say the trial court clearly erred in finding that a reasonable probability exists that the conditions resulting in G.D.S.'s removal or the reasons for his placement outside Father's care will not be remedied.

[13] 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 Cty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, the recommendations by 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 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*. Court Appointed Special Advocate Debrah Martin testified that she would be "so fearful" that G.D.S. would regress if Father's rights were not terminated, and both FCMS Busick and FCM Floyd testified that termination of Father's

parental rights was in G.D.S.'s best interests. Transcript Volume II at 94. Based on the testimony, as well as the totality of the evidence as set forth in the record and termination order, we conclude that clear and convincing evidence supports the trial court's determination that termination is in G.D.S.'s best interests.

[14] For the foregoing reasons, we affirm the trial court.

[15] Affirmed.

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