

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 J.S., Sr., Father, and J.S., Jr.,
Minor Child,

J.S., Sr.,

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

April 5, 2022

Court of Appeals Case No.
21A-JT-2292

Appeal from the
Tippecanoe Superior Court

The Honorable
Tricia L. Thompson, Magistrate

Trial Court Cause No.
79D03-2012-JT-100

Molter, Judge.

[1] J.S., Jr. (“Child”) was born prematurely to J.S., Sr. (“Father”) and T.S.¹ (“Mother”) (collectively “Parents”), and he required especially diligent care. Parents were unable to properly care for Child’s special needs or provide him with stable housing, so the Indiana Department of Child Services (“DCS”) successfully petitioned the juvenile court to adjudicate Child as a child in need of services. After those services failed to yield improvement, DCS petitioned to terminate Parents’ parental rights to Child, and a DCS supervisor and Child’s court appointed special advocate both testified that termination was in Child’s best interests. The juvenile court agreed and terminated the parental rights. Father now appeals, contending the juvenile court erred in terminating his parental rights because DCS failed to prove by clear and convincing evidence the required elements for termination. Because we disagree, we affirm.

Facts and Procedural History

[2] Child was born November 24, 2019. When he was ten days old, DCS received a report about him, and their investigation revealed he was born prematurely, was medically fragile, required monitoring for seizures, required oxygen, and needed medicine every six hours to prevent pulmonary distress. Parents lacked stable housing and needed education to understand Child’s medical needs, but they refused help from providers. Providers also repeatedly observed Child’s oxygen and pulse oximeters were either turned off or not correctly attached.

¹ Mother did not contest Child’s adoption, was dismissed from the termination proceedings, and does not participate in this appeal.

Parents were unable to tell providers when Child received medication, failed to follow medical instructions to reduce the amount and frequency of medication, and neglected to change Child's diapers and bathe him appropriately.

[3] When Child was about one month old, DCS removed him from Parents' care and initiated a child in need of services ("CHINS") case after Child was in the emergency room because he was hypoxemic and Parents failed to administer his medication. Also, during this time, Parents did not have stable housing, and they refused DCS's services, through an Informal Adjustment, to help educate them on Child's special needs. The juvenile court adjudicated Child to be a CHINS a couple of months later.

[4] On March 13, 2020, the juvenile court entered its dispositional order, with a plan of reunification. It also issued its parental participation order, requiring Father to participate in home-based case management, including parenting education and parenting assessment; psychological evaluation; psychiatric evaluation; medication management; therapy; and supervised parenting time. As to his home-based case management, Father struggled to consistently attend appointments and complete recommended tasks. He also resisted help, education, and recommendations, and he required daily assistance with coping, problem-solving, and handling issues. Further, Father was unable to provide stable housing for Child, and he did not demonstrate an ability to provide for Child's basic needs. He lost or quit several jobs during the CHINS case and struggled to manage his finances.

- [5] The juvenile court entered a permanency order several months later, finding that the objectives of its dispositional order were not accomplished. It then approved adoption as Child’s permanency plan. On January 4, 2021, DCS filed a petition to terminate Father’s parental rights. A few months later, the juvenile court held two evidentiary hearings on the termination petition.
- [6] At the hearings, DCS presented evidence regarding Father’s history of mental illness. His psychological assessment revealed that he suffers from major depressive disorder and experiences paranoia, mental confusion, and cognitive impairment. DCS also presented evidence that Child was medically fragile and required diligent supervision. This included that Child was diagnosed with sleep apnea and feeding dysfunction. He had trouble swallowing and required strict monitoring and thickened liquids so that he would not aspirate. During his supervised parenting time, and despite having detailed instructions, Father failed to properly prepare Child’s formula milk and bottle, causing Child to choke during feedings.
- [7] Joyce Fasani, a DCS supervisor, testified that she believed termination and adoption were in Child’s best interests because Father’s mental health issues prevented him from being able to care for Child for long periods of time. In particular, she described how, although Father is willing to care for Child’s special needs, he has trouble remembering how to care for Child due to his cognitive dysfunction. Similarly, Child’s court appointed special advocate (“CASA”), Elizabeth Dunlap, testified that she believed termination and adoption were in Child’s best interests. She explained that since she began

working with the family Father consistently struggled to maintain stable housing and employment and to raise Child. She also testified that Child had been living with his foster family for seventeen months. Child is bonded with his foster family, and they plan to adopt him.

- [8] In September 2021, the juvenile court entered its decree terminating Father's parental rights. The juvenile court concluded, among other things, that: there was a reasonable probability that the conditions which resulted in Child's placement outside the home will not be remedied; there was a reasonable probability that the continuation of the parent-child relationship between Father and Child threatens Child's well-being; termination of parental rights was in Child's best interests; and Child's adoption was the satisfactory plan that DCS had for the care and treatment of Child. Father now appeals.

Discussion and Decision

I. Standard of Review

- [9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of witnesses. *In re H.L.*, 915 N.E.2d 145, 149 (Ind. Ct. App. 2009). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the juvenile court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 148–49.

[10] Where, as here, the juvenile court entered specific findings and conclusions, we apply a two-tiered standard of review. *In re B.J.*, 879 N.E.2d 7, 14 (Ind. Ct. App. 2008), *trans. denied*. First, we must determine whether the evidence supports the findings,² and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous only when the record contains no facts or inferences drawn therefrom that support it. *Id.* If the evidence and inferences support the trial court’s decision, we must affirm. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[11] As our Supreme Court has observed, “[d]ecisions to terminate parental rights are among the most difficult our trial courts are called upon to make. They are also among the most fact-sensitive—so we review them with great deference to the trial courts” *E.M. v. Ind. Dep’t of Child Servs.*, 4 N.E.3d 636, 640 (Ind. 2014). While the Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise their child, the law allows for the termination of those rights when a parent is unable or unwilling to meet their responsibility as a parent. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 145 (Ind. 2005); *In re D.P.*, 994 N.E.2d 1228, 1231 (Ind. Ct. App. 2013).

² Father does not challenge the juvenile court’s findings of fact. So, he has waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (noting this court accepts unchallenged trial court findings as true).

[12] Parental rights are not absolute and must be subordinated to the child's interests in determining the appropriate disposition of a petition to terminate the parent-child relationship. *In re J.C.*, 994 N.E.2d 278, 283 (Ind. Ct. App. 2013), *reh'g denied*. The purpose for terminating parental rights is not to punish the parent but to protect the child. *In re D.P.*, 994 N.E.2d at 1231. Termination of parental rights is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

II. Sufficiency of the Evidence

[13] Before an involuntary termination of parental rights may occur, the State 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 [CHINS];

(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). The State’s burden of proof for establishing these allegations in termination cases is one of clear and convincing evidence. *In re H.L.*, 915 N.E.2d at 149. Moreover, “if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a) (emphasis added). On appeal, Father challenges only the juvenile court’s conclusions with respect to subparts (B) and (C).

A. Subpart (B)

[14] The juvenile court found that DCS proved, by clear and convincing evidence, that there was a reasonable probability that: (1) the conditions that resulted in Child’s removal or the reasons for placement outside the home of the parents will not be remedied and (2) the continuation of the parent-child relationship poses a threat to the well-being of Child. *See* Ind. Code § 31-35-2-4(b)(2)(B).

[15] On appeal, Father alleges error from the juvenile court’s conclusions regarding subsections (i) and (ii) of Indiana Code section 31-35-2-4(b)(2)(B). But because Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the juvenile court to find only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence, we will not address Father’s argument, under subsection (ii), that DCS failed to present clear and

convincing evidence that the continuation of the parent-child relationship poses a threat to Child's well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B)(ii).

[16] We find no error in the trial court's conclusion that there was a reasonable probability that the conditions resulting in the removal of Child were unlikely to be remedied. In determining whether there is a reasonable probability that the conditions that led to a child's removal and continued placement outside the home will not be remedied, we 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, we must ascertain what conditions led to the child's placement and retention in foster care, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.*

[17] 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." *E.M.*, 4 N.E.3d at 643 (quoting *K.T.K.*, 989 N.E.2d at 1231). This allows courts to consider "evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *In re D.B.*, 942 N.E.2d 867, 873 (Ind. Ct. App. 2011). In addition, DCS need not provide evidence ruling out all possibilities of change; rather, it must establish only that there is a reasonable probability that the parent's behavior will not change. *In re Involuntary Termination of Parent-Child Relationship of Kay L.*, 867 N.E.2d 236,

242 (Ind. Ct. App. 2007). “We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *E.M.*, 4 N.E.3d at 643. When determining whether the conditions for the removal would be remedied, the juvenile court may consider the parent’s response to the offers of help. *D.B.*, 942 N.E.2d at 873.

[18] Here, Child was removed from the home because Parents failed to administer Child’s medication, refused DCS’s services to help educate them on Child’s special needs, and did not have stable housing. Also, while Father attempted to comply with the juvenile court’s dispositional and parental participation orders, he struggled to consistently attend appointments and complete recommended tasks. He also could not function independently, requiring daily assistance with coping, problem-solving, and handling issues. And he resisted DCS’s help, education, and recommendations.

[19] As the juvenile court acknowledged, Father also has a history of being unable to acquire stable housing and employment. First, after Child was born, Parents moved between three residences within ten days. Then, when they took Child to the emergency room for hypoxemia, they were homeless. Further, after DCS removed Child from the home and as the underlying CHINS case progressed, Father was still unable to maintain stable housing or employment. Father moved between friends’ homes and sometimes lived in his vehicle. Even after Father purchased a trailer home in 2020, he would still sometimes sleep in his vehicle or stay in the trailer home without electricity. And, although Father

was able to rent a studio apartment one month later, he was nearly evicted twice. Between the fall of 2020 and January 2021, Father moved in with his in-laws, despite being separated from Mother. While there, he had no electricity or running water for weeks. In January 2021, he moved back into his studio apartment, but he has had trouble paying his rent and utilities, even with financial assistance from others.

[20] Father argues that the juvenile court was required to judge his fitness at the time of the termination proceeding and should have considered that he had stable housing and regularly interacted with Child at that time. But Father misunderstands the delicate balance that the juvenile court is entrusted with. *E.M.*, 4 N.E.3d at 643 (“We entrust th[e] delicate balance to the trial court, which has [the] discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.”). The juvenile court must not only take into consideration evidence of changed conditions at the time of the termination proceeding, but it must also balance a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quoting *K.T.K.*, 989 N.E.2d at 1231). It was therefore appropriate to consider the evidence of Father’s history of lacking stable housing even though he had an apartment at the time of the termination hearing. *In re D.B.*, 942 N.E.2d at 873.

[21] We also find that Father has misplaced his reliance on the decision in *Matter of M.I.*, 127 N.E.3d 1168 (Ind. 2019). In *Matter of M.I.*, our Supreme Court held that a mother’s parental rights could not be terminated based on the “singular

conclusion” that she was unable to secure suitable housing. *Id.* at 1171. The Court reasoned that, while the mother struggled with finding suitable housing, she and her children “shared a ‘strong, loving bond’” and the mother “had made progress [by] complying with her parent-participation plan.” *Id.* The Court also noted that the mother did not have personal transportation and “went to counseling and visitations by foot,” and DCS case managers conceded that the requirements of the parental participation plan were “cumbersome, often requiring Mother to be in three or four different places in a given week, while also keeping a job, attending visitations, and looking for housing.” *Id.*

[22] Here, Father’s parental rights were not terminated only because he was unable to secure stable housing. The juvenile court found that he was also unable to secure employment and provide for Child’s special needs. Particularly, Father lost or quit several jobs during the underlying CHINS case and struggled managing his finances. Further, he consistently failed to properly prepare Child’s formula milk and bottle, which was important due to Child’s feeding dysfunction. And, due to cognitive impairment, Father was unable to remember how to care for Child’s medical needs. The record also shows that Father failed to adequately address his mental health issues. While he attended therapy, Father struggled to make progress because he often left the sessions early or was distracted.

[23] In sum, although Father points to evidence that demonstrates he loves Child and has tried to participate in some services, “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.” *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). After at least one year of DCS involvement, Father failed to take any meaningful steps to address his housing or mental health. Accordingly, clear and convincing evidence supported the trial court’s conclusion that there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside Father’s care will not be remedied.

B. Subpart (C)

[24] Father also challenges the juvenile court’s conclusion that termination of the parent-child relationship was in the best interests of Child. 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. *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. The court must subordinate the interests of the parent to those of the child. *Id.* And the recommendations of both the case manager and the 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 the child’s best interests. *A.D.S.*, 987 N.E.2d at 1158–59.

[25] A juvenile court “need not wait until the child is irreversibly harmed such that [their] physical, mental, and social development is permanently impaired before terminating the parent-child relationship.” *In re A.K.*, 924 N.E.2d 212, 224

(Ind. Ct. App. 2010). Additionally, a child's need for permanency is an important consideration in determining the best interests of a child. *Id.* At the time of the termination hearing, Child had been living with his foster family for several months, and Father had failed to make the changes in his life necessary to provide Child with a safe and healthy environment. As discussed above, DCS presented sufficient evidence that there was a reasonable probability that Father would not remedy the reasons for Child's removal from his care.

[26] DCS Supervisor Fasani also opined that termination of Father's parental rights was in the best interests of Child. She testified that she would hesitate to put Child in Father's care because his mental health issues prevented him from being able to properly care for Child, especially for long periods of time and without supervision. She also stated that, due to his cognitive dysfunction, Father had trouble remembering how to care for Child's special needs.

[27] Similarly, CASA Dunlap testified that she believed termination of Father's parental rights was in the best interests of Child. She testified that, since she began working with the family, Father consistently struggled to maintain stable housing and employment. She also testified that Child had been living with his foster family for seventeen months, and DCS presented evidence that Child was particularly attached to his foster mother—so much so that Child would get upset when she left his sight.

[28] Although we do not doubt that Father loves Child and wishes to be with him, *see* Appellant's Br. at 16, Father has demonstrated time and again that he is

unable to care for Child. The juvenile court made findings sufficient to terminate Father's parental rights, and those findings, which are supported by the evidence, are unchallenged. Father has thus failed to establish error and we therefore affirm the juvenile court's order terminating Father's parental rights.³

[29] Affirmed.

Riley, J., and Robb, J., concur.

³ We note that Father argues "DCS elected to only provide him with virtual therapy sessions to treat and cope" with his diagnoses for Major Depressive Disorder and Cognitive Disorder NOS, which he believes was inadequate, and this "alone should fail to meet the test of remedying the reason for removal of the baby from Father's care." Appellant's Br. at 12. However, Father does not develop this argument or support it by citing to authority. *See id.* Therefore, he has waived it for our review. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present a cogent argument).