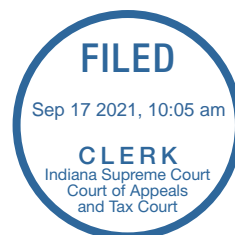


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:

P.D. (*Minor Child*),

and

D.D. (*Father*),

Appellant-Respondent,

v.

The Indiana Department of
Child Services,

Appellee-Petitioner,

September 17, 2021

Court of Appeals Case No.
21A-JT-654

Appeal from the Henry Circuit
Court

The Honorable Bob A. Witham,
Judge

Trial Court Cause No.
33C01-2012-JT-34

Robb, Judge.

Case Summary and Issue

- [1] D.D. (“Father”) appeals the juvenile court’s termination of his parental rights to P.D. (“Child”), raising several issues for our review which we consolidate and restate as one: whether the juvenile court’s termination order is clearly erroneous. Concluding it is not, we affirm.

Facts and Procedural History

- [2] Child was born to B.H. (“Mother”) on December 6, 2018.¹ Father’s paternity of Child was established in May 2019. After an instance of domestic violence between Mother and her significant other in Child’s presence and reports of Mother’s recent drug use and pending eviction, DCS filed a petition with the juvenile court alleging Child was a Child in Need of Services (“CHINS”). Child was removed from Mother’s care on October 31, 2019, and placed with Father. Mother admitted Child was a CHINS, Father did not contest the allegations of the petition, and on December 30, 2019, the juvenile court adjudicated Child a CHINS. The juvenile court’s dispositional and parental participation orders required Father to notify DCS of any changes in employment, address, or phone number, allow DCS and service providers to make announced and unannounced visits, enroll in recommended programs, keep all appointments with service providers, maintain suitable and stable

¹ Mother’s parental rights were also terminated in this proceeding, but she does not appeal. We therefore focus the recitation of the facts on those pertaining to Father.

housing, secure and maintain a source of income, and participate in fatherhood engagement services. At that time, the permanency plan was reunification.

[3] Patricia Hughes was assigned as the Family Case Manager (“FCM”) in January 2020. On January 27, 2020, Father sent several texts to the FCM telling her that he “was having a lot of mental health [issues] and was struggling, talking about running away with his child, not being able to pay certain bills in the home, and not being able to manage the stress that he was under.” Transcript of Evidence, Volume 2 at 89. He had been drinking and was “pretty worked up.” *Id.* DCS made the decision to remove Child from his care, which made him “pretty upset and angry.” *Id.* at 90. Child was ultimately placed in the home of her paternal grandfather, C.D., and his significant other of five years, where she remained at the time of the termination hearing.

[4] During the FCM’s involvement with Father, they had “lapses of interaction at times.” *Id.* at 99-100. She tried numerous times to convince Father to get a mental health evaluation, but he was resistant because his mother had been placed on medication as a result of a mental health evaluation, and he felt it negatively impacted her. The lack of a mental health evaluation has been “the roadblock for him.” *Id.* at 104. The FCM testified at the termination hearing that she “would not feel comfortable with [Child] being placed with [Father] without him . . . undergoing a mental health evaluation” and doing whatever that evaluation determined. *Id.* at 102.

[5] Andrew Keister, a home-based case manager, worked with Father from December 2019 to approximately April 2020. After Child’s removal from his care, Father initially refused to participate in supervised visits with Child because he felt it was unfair that Child was removed. During the time Keister worked with Father, Father made some progress: he connected with community supports, obtained food stamps and utility assistance, and found employment. But Keister observed that Father would become agitated if “things didn’t progress [according] to [his] timeline[.]” *Id.* at 83. Sometime in April 2020, Father participated in an online child, family, and team meeting and told everyone participating in the meeting that they were making him angry “and if [we] wanted to find out how angry he was, just show up at his house and he was gonna show us.” *Id.* at 84. Keister interpreted that as a threat of physical violence to the team. Father stopped communicating with Keister after that meeting and services were closed out.

[6] When services eventually restarted, Carl Rhinehart provided home-based casework services and supervised ten to fifteen visits between Father and Child beginning in May 2020. “Supervised visits went good initially. [Father] was happy to see his daughter and was engaged with her during visits.” *Id.* at 69-70. But during a visit in July 2020, Father became upset, began making negative, aggressive, and threatening comments about Mother, and Rhinehart became “uncomfortable and concerned” when he could not calm Father and redirect his focus back to the visit. *Id.* at 74. Rhinehart ended the visit early to remove Child from that environment and ultimately, supervised visits were officially

suspended. Although the juvenile court told Father to get a mental health evaluation for the visits to resume, Father never did. Therefore, July 2020 was the last time Father had supervised visitation with Child. Rhinehart ended home-based casework services in July as well, because Father was not receptive to options or ideas Rhinehart offered and ultimately, there were not “changes that we were able to make together.” *Id.* at 71. In October 2020, the juvenile court approved a concurrent permanency plan of reunification and adoption.

[7] In December 2020, DCS filed a petition for involuntary termination of the parent-child relationship alleging there was a reasonable probability the conditions that resulted in Child’s removal or the reasons for placement outside the home will not be remedied and there was a reasonable probability that the continuation of the parent-child relationship poses a threat to Child’s well-being. A hearing was held in March 2021.

[8] Father testified that he had used illegal drugs during this case, including marijuana as recently as six weeks prior to the hearing. He last had a place of his own to stay in July 2020 and was homeless at the time of the hearing, although he had recently started a job and hoped to have housing of his own within thirty days. He acknowledged he had not provided any money to his father toward Child’s support since she was removed from his care, but noted he was neither ordered nor asked to do so. He denied any mental health diagnoses but said it had been recommended multiple times – by DCS, by the courts, and by his family – that he have a mental health evaluation because of his “anger issues.” *Id.* at 54. His reactions depend on “how angry [he] get[s,]”

and he said he has never touched another person in anger, but he has threatened “[a]nyone that’s close to [him].” *Id.* Father admitted he had not always kept the FCM up to date on his address, had not enrolled in programs the FCM recommended, had not kept all of his appointments with DCS or service providers, had not maintained safe and suitable housing, and although he participated in fatherhood engagement services, he did not complete them. He indicated that, even though he had not fully participated in services previously, he was “110%” willing to get a mental health assessment and follow through on any recommendations, submit to drug screens, and cooperate with DCS if given another opportunity. *Id.* at 64. And he stated that he was in a position to care for Child immediately. *See id.* at 55.

[9] C.D. testified at the termination hearing that Father “seemed to be better the past two (2) or three (3) weeks than he’s probably been in the past two (2) or (3) years[,]” as he had gotten a job and was “getting a little stability there.” *Id.* at 13, 21. Nonetheless, he did not think Father was able to care for Child on his own. *Id.* at 15. Father had been “in and out of different places” for the past year, none of which were apartments or homes that were his, and C.D. believed that Father’s instability stemmed from “frustration over different things. This day and age with kids, they think everything . . . can just happen right now instead of working for it.” *Id.* at 14. Child had been placed with C.D. and his significant other since February of 2020, and Father had not contributed anything toward Child’s expenses or needs, although he had purchased a birthday gift for her. There was a plan for Father to celebrate Christmas with

the family, but Father wanted to take Child away from the house for three or four hours and C.D. would not allow that. Father became “very upset” and acted “[p]retty violent[,]” wanting to fight C.D., so the visit did not occur. *Id.* at 18. When asked what he thought the juvenile court should do, C.D. responded: “[M]y opinion is, is this has been a long, drawn [sic] out process. I just want the young girl to have stability somewhere. But the only place I feel like it’s gonna be is in [my] hands. I don’t know that there’s any stability right now at this point, don’t know if it’d be six (6) months or a year out” for Father. *Id.* at 19. C.D. and his significant other were prepared to adopt Child if allowed.

[10] The director who oversaw Child’s court appointed special advocate (“CASA”)² testified the CASA office recommended that Father’s parental rights be terminated so that Child could achieve some permanency and stability through adoption by C.D. “There’s . . . always been a concern for [Father’s] mental health and sudden outbursts where even providers didn’t feel safe and we just feel that it’s time, that as a very young child who is forming her bonds, who is establishing her own family ties, that’s being done consistently in her grandfather’s home.” *Id.* at 108. The FCM stated that DCS would also recommend termination of parental rights. *See id.* at 101.

² The CASA did not testify, but the director testified that office protocol was for the director to have continuing discussions with the advocates who visit with the children assigned to them. *See id.* at 107.

[11] The juvenile court entered its order terminating Father’s parental rights on March 17, 2021, finding that DCS had met its burden of proving “there is a reasonable probability that the conditions that resulted in the child’s removal . . . from the home of . . . Father will not be remedied, or that continuation of the parent-child relationship poses a threat to the well-being of the Child” and termination of the parent-child relationship is in the best interests of the child. Appealed Order at 9. Father now appeals.

Discussion and Decision

I. Standard of Review

[12] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). But the law also provides for the termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). We acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” but we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights.” *In re I.A.*, 934 N.E.3d 1127, 1132 (Ind. 2010). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2001), *trans. denied*. As such, termination is intended as a last resort,

available only when all other reasonable efforts have failed. *Id.* The purpose of terminating parental rights is to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied.*

[13] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship (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.

* * *

(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.

DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2.³

[14] If the juvenile court finds the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a). In doing so, the juvenile court must enter findings and conclusions. Ind. Code § 31-35-2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep’t of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. To determine whether a judgment terminating parental rights is clearly erroneous, we consider “whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment.” *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

³ We note that in his brief, Father alleges DCS must prove, among other things, “either (1) that there is a reasonable probability that the conditions resulting in removal of the child will not be remedied or (2) that continuation of the parent-child relationship poses a threat to the child’s well-being or (3) that it is the child’s best interest.” Appellant’s Brief at 16 (emphasis added). It is true that Indiana Code sections 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the court need only find that one of the requirements of subsection (b)(2)(B) was established by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). But the child’s best interest is a separate requirement. Ind. Code § 31-35-2-4(b)(2)(C). Therefore, DCS is required to prove one of the requirements of subsection (b)(2)(B) and that termination is in the child’s best interests.

II. Termination of Parental Rights

A. Remedy of Conditions

[15] In determining whether the evidence supports the juvenile court’s finding that Father was unlikely to remedy the reasons for Child’s removal, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d at 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.* (quotations and citations omitted).

[16] In the second step, a parent’s fitness to care for his child must be judged at the time of the termination hearing, taking into consideration evidence of changed conditions. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). The parent’s habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. *Id.* “The [juvenile] court is entrusted with balancing a parent’s recent improvements against habitual patterns of conduct.” *In re J.S.*, 133 N.E.3d at 715. In doing so, it may 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 W.M.L.*, 82 N.E.3d 361, 367 (Ind. Ct. App. 2017). But such a determination “must be founded on factually-based occurrences as documented in the record—not simply speculative or *possible* future harms.” *In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable

probability the parent's behavior will not change. *In re Ma.J.*, 972 N.E.2d 394, 401 (Ind. Ct. App. 2012).

[17] Child was removed from Father's care because of his admitted mental health issues and inability to care for her. The juvenile court made the following findings related to whether those conditions will likely be remedied:

- Father testified at the termination hearing that he was homeless and had been homeless since July 2020;
- During the CHINS proceedings, Father was employed at multiple jobs for short periods, had extended periods without formal employment, and had been employed for three weeks as of the time of the hearing;
- Father used illegal substances during the CHINS proceedings;
- Father repeatedly threatened violence, resulting in services being suspended or stopped and denying him the opportunity to spend Christmas with Child;
- Although Father said he would now be willing to undergo a mental health assessment, Father has ignored multiple recommendations that he do so in the past;
- Father failed to comply with many provisions of the dispositional and parental participation plan orders.

See Appealed Order at 4-6. The juvenile court found credible the various witnesses' testimony that Father is not able at this time to adequately and safely parent Child. Further, the juvenile court found:

[Father] has demonstrated throughout his involvement with DCS that he is unable to adequately parent [Child] due to his unwillingness to consistently engage in services offered without cost to him that would help him overcome his struggles with mental health issues, substance abuse, lack of consistent employment and housing.

Id. at 8. For those reasons, the juvenile court concluded that there was a reasonable probability that the conditions that resulted in Child's removal from Father's care would not be remedied.

[18] Father contends the juvenile court's findings do not support the judgment but does not challenge any particular findings as unsupported by the evidence. When findings of fact are unchallenged, we accept them as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019). Father instead focuses on *other* evidence he claims the juvenile court should have considered, primarily that he is now employed and hoped to have a stable home within thirty days and that if given another opportunity, he is now prepared to submit to a mental health evaluation and comply with services in order to reunify with Child.

[19] As noted above, the juvenile court is to assess a parent's ability to care for his child at the time of the termination hearing, taking into account changed conditions but also considering habitual patterns of conduct and the parent's response to offered services. *See Matter of K.T.*, 137 N.E.3d at 326. The juvenile court acknowledged that Father had a job at the time of the termination hearing. *See* Appealed Order at 5. But the juvenile court also noted Father had multiple jobs during these proceedings and had only had his current job for

three weeks. He was still homeless. He never fully participated in services offered by DCS and had not participated in any, including visiting with Child, since July 2020. Father's last-minute claim of imminent change and willingness to do whatever is necessary to reunify with Child does not overcome the fact that Father has failed to address the primary reason for Child's removal – his mental health – and has demonstrated an habitual pattern of instability and failure to follow through with services throughout these proceedings. *See In re D.K.*, 968 N.E.2d 792, 799 (Ind. Ct. App. 2012) (noting that a juvenile court is not required to accept that evidence of last-minute changes trumps historical evidence of a different pattern of behavior).

[20] The juvenile court's finding that there is a reasonable probability the conditions that resulted in Child's removal from Father's care will not be remedied is not clearly erroneous.⁴

B. Best Interests

[21] Father also contends the juvenile court's conclusion that termination is in the best interests of Child is clearly erroneous.

[22] In determining whether termination of parental rights is in the best interests of a child, the court is required to look at the totality of the evidence. *Z.B.*, 108

⁴ Because this finding is supported by clear and convincing evidence, we need not also consider whether continuation of the parent-child relationship poses a threat to Child's well-being. *See In re L.S.*, 717 N.E.2d at 209.

N.E.3d at 903. In doing so, the court must subordinate the interests of the parents to those of the children involved. *Id.* The testimony of service providers may support a finding that termination is in the child’s best interests. *Id.*

[23] Father’s FCM since the beginning of this case testified that DCS “would be in favor of the termination of the parental rights[,]” with the plan for Child to remain with C.D. and his significant other and eventually be adopted by them. Tr., Vol. 2 at 101. C.D. testified that although he had seen some recent improvements in Father, he did not think Father was currently able to care for Child on his own and did not know how long it might be before he could. And the CASA representative testified that it would be best for Child if Father’s parental rights were terminated so that Child could have consistency and permanency in her life.

[24] Permanency is a central consideration in determining the best interests of a child, *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009), but Father does not appear able to offer permanency to Child at this time. Child has been with C.D. since she was approximately one year old. Allowing a parent additional time to address the conditions that resulted in removal may be warranted in cases where the parent is showing steady and continued improvement in addressing those conditions, *see In re K.E.*, 39 N.E.3d 641, 647-49 (Ind. 2015), but here, Father has shown no progress toward addressing his mental health issues and little progress toward obtaining stability.

[25] Based on the totality of the evidence, including Father's homelessness, his failure to show any commitment to addressing his mental health issues, and the testimony from the FCM and the CASA's office recommending termination and adoption, the juvenile court's conclusion that termination of Father's parental rights is in Child's best interests is not clearly erroneous. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and the FCM, coupled with evidence that conditions resulting in the continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence that termination was in the child's best interest), *trans. denied*.

Conclusion

[26] The evidence clearly and convincingly supports the juvenile court's findings that conditions resulting in Child's removal from Father's care will not be remedied and that termination is in Child's best interests. In turn, those findings clearly and convincingly support the juvenile court's judgment terminating Father's parental rights. Accordingly, the judgment is affirmed.

[27] Affirmed.

Bradford, C.J., Altice, J., concur.