

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Involuntary
Termination of Parent-Child
Relationship of J.L.W. (Minor
Child) and
J.W. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

July 29, 2022

Court of Appeals Case No.
22A-JT-303

Appeal from the Montgomery
Circuit Court

The Honorable Heather Barajas,
Judge

Trial Court Cause No.
54D01-2101-JT-27

Crone, Judge.

Case Summary

- [1] J.W. (Father) appeals an order involuntarily terminating his parent-child relationship with J.L.W. (Child). He contends that the Indiana Department of Child Services (DCS) failed to prove by clear and convincing evidence that the reasons for removal are unlikely to be remedied. We affirm.

Facts and Procedural History

- [2] A.C. (Mother) gave birth to Child on August 9, 2019. At the time, she was married to K.C. and had two young children with him. Less than one month later, DCS removed Child¹ and filed a child in need of services (CHINS) petition. The petition alleged that Mother and Father had recently moved back to Indiana from Arkansas, were using methamphetamine, and were living with Child in a residence that was cluttered, dirty, and littered with drug paraphernalia. Ex. Vol. 4 at 75-76. It further alleged that Father's sister had been caring for Child most of the time since Mother and Father had returned to Indiana.
- [3] The court held an initial and detention hearing in September 2019. In November 2019, the court held a factfinding hearing, adjudicated Child a CHINS, and continued placement of Child with her paternal aunt. Following a December 2019 dispositional hearing, the court issued a January 2020 order

¹ The two children of A.C. and K.C. were removed at the same time as Child but are not the subject of this appeal. In December 2021, Mother signed consents for Child and the two children of K.C. to be adopted. Neither Mother nor K.C. is a party to this appeal. Father's paternity of Child is not an issue.

directing Father to participate in reunification services and specifically noted substance abuse issues that needed to be addressed. *Id.* at 101-06.

[4] By November 2020, the court found that Father had not complied with Child's case plan, was not participating in services, and was incarcerated on pending charges. *Id.* at 119. Per DCS request, the court issued an order changing the permanency plan to reunification with a concurrent plan of adoption. *Id.* at 120. In December 2020, DCS filed a petition to terminate Father's parental rights. Following a factfinding hearing in August and December of 2021, the court terminated Father's parental rights in January 2022. Further facts shall be supplied as necessary.

Discussion and Decision

[5] We have long applied a highly deferential standard of review in cases involving the termination of parental rights. *In re D.B.*, 942 N.E.2d 867, 871 (Ind. Ct. App. 2011). We neither reweigh evidence nor assess witness credibility. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We consider only the evidence and reasonable inferences favorable to the trial court's judgment. *Id.* Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. *Id.* Unchallenged findings stand as proven. *T.B. v. Ind. Dep't of Child Servs.*, 971 N.E.2d 104, 110 (Ind. Ct. App. 2012), *trans. denied*; *Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020). In deference to the trial court's

unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). Clear error is that which “leaves us with a definite and firm conviction that a mistake has been made.” *J.M. v. Marion Cnty. Off. of Fam. & Child.*, 802 N.E.2d 40, 44 (Ind. Ct. App. 2004), *trans. denied*. “[I]t is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by the appellant before there is a basis for reversal.” *Best v. Best*, 941 N.E.2d 499, 503 (Ind. 2011) (citations omitted).

[6] “Parents have a fundamental right to raise their children – but this right is not absolute. When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Matter of Ma.H.*, 134 N.E.3d 41, 45-46 (Ind. 2019) (citation omitted), *cert. denied* (2020). To terminate parental rights, Indiana Code Section 31-35-2-4(b)(2)(B) requires DCS to demonstrate the following, among other requirements not relevant here:

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[.]

As the statutory text makes clear, the trial court need only find that *one* of the three elements has been established by clear and convincing evidence. *See A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*; Ind. Code § 31-37-14-2; *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 377 (Ind. Ct. App. 2006), *trans. denied*.

[7] In the present case, the trial court's termination order includes thirty-six findings and thirteen conclusions of law. Father concedes that the findings are supported by the evidence yet asserts that the findings do not support the judgment. Appellant's Br. at 8. In arguing that DCS presented insufficient evidence that there is a reasonable probability that the conditions supporting the initial removal would not be remedied, Father challenges the following conclusion:

The DCS has proven by clear and convincing evidence that 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. Child was originally removed from his parents because they were using methamphetamine and Child was around the Methamphetamine. Father was offered opportunities through the DCS Family Case Manager and the CHINS Dispositional Order to participate in substance abuse treatment. He failed and refused to participate in those services and continued to use Methamphetamine. He participated in criminal activity in 3 counties in Indiana which resulted in charges being filed, one in Porter County for serious drug-related charges. His charges have not all yet been resolved, and his future

is at this point uncertain. Even were he to be released in February 2022 as he claims, he would have to commence services and maintain his sobriety. This would delay Child's permanency. Father has never provided Child with any stability, has not maintained stable housing or employment and has never actually cared for Child except for the period of time after her birth up to the move to Indiana. And even then, a DCS investigation had already been commenced in Arkansas where the family was residing. Father has another child in the care of Mother and a child on the way. Child has lived with no one other than her relative placement, paternal aunt and her husband since her birth, except for the month after her birth. She knows the placement as Mom and Dad and is very bonded to them. Child is now 2 years of age.

Appealed Order at 9 (conclusion #9).

[8] Father claims that DCS presented no evidence that he had been using methamphetamine after 2020. Father states that he was incarcerated for several months prior to termination and was engaged in voluntary drug treatment. Further, he highlights his plan to live with Mother after his release and states that she had been sober for a year and a half prior to termination.

[9] While we may disagree with Father's argument regarding conclusion #9, we need not address it because the trial court also included conclusion #10. Conclusion #10, that DCS has "proven by clear and convincing evidence that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of" Child, is sufficient to justify termination per Indiana Code Section 31-35-2-4(b)(2)(B)'s disjunctive language. Father raised no challenge whatsoever regarding conclusion #10 and

challenged none of the myriad findings that support the reasonable probability that continuation of the parent-child relationship poses a threat to Child's well-being.

[10] Within those unchallenged findings, the trial court outlined how the family was involved in a pending DCS assessment in Arkansas shortly after Child's birth and before moving to Indiana and becoming involved with DCS here. Appealed Order at 2. The court reiterated the requirements placed upon Father under the dispositional order: contact family case manager weekly to monitor compliance, enroll in recommended programs, obtain required assessments, not use, consume, manufacture, trade, distribute, or sell illegal controlled substances, obey the law, submit to random drug screens, attend all scheduled visitations, and engage in a substance abuse program, individual counseling home-based casework, and life skills. *Id.* at 3-4.

[11] The court found that Father never participated in any substance abuse assessment as recommended and referred by the family case manager, and while he did participate in a substance abuse treatment program at Valley Professionals briefly in 2020, he was discharged for failing to keep in communication. *Id.* at 4. The court listed Father's twenty-seven positive screens for methamphetamine between September 2019 and August 2020 before noting that Father did not submit to any drug screens after August 10, 2020. *Id.* at 4-5. Additional relevant findings include:

20. To date, Father has failed to participate in any programs recommended by the Family Case Manager and ordered by the CHINS Court.

21. Father was inconsistent in visiting Child. He missed many visits except during the period January to March 2020.

22. Aside from requesting the FCM not bring Child to the jail to visit with him there, *he has not requested visits or inquired about Child in over a year.*

....

24. Father's whereabouts were unknown from September 2020 to January 2021. *Father did not contact or attempt to contact the Family Case Manager during this period.*

25. Father is currently incarcerated in the Porter County Jail, where he is awaiting the outcome of charges filed for Dealing in Methamphetamine. The charges were filed in Porter County in October 2020.

26. Father stated he has a plea offer in Porter County and is awaiting sentencing. He expects to be released February 2022 on probation; however, there is no change of plea hearing or sentencing hearing reflected on the Porter County case record.

27. Father was convicted and sentenced in Montgomery County on August 19, 2021 for Theft, a Class A Misdemeanor, and Fraud, a Level 6 Felony, in Cause Number 54D01-1910-F6-3100. He received an executed sentence of 545 days.

28. Father has charges pending in Tippecanoe County for Theft and Counterfeiting which have not been resolved. If he is

released from Porter County Jail, he is likely to be transported to Tippecanoe County to await the outcome of those charges.

29. Father stated he did not participate in substance abuse treatment because he was using methamphetamine heavily.

30. *Father's housing and employment have been unstable since Child's birth.*

31. Father and Mother of Child are still in a relationship. Father's plans upon release from jail is to move into his father's home with Mother. *Mother has another child by [Father] and is currently pregnant.*

32. Child has remained out of Father's care since initial removal. She continues in placement with her paternal aunt and uncle.

33. Child is very bonded to her placement relatives. She refers to them as "Mom" and "Dad."

34. The paternal aunt and her husband wish to adopt Child.

Id. at 5-6 (emphases added).

[12] The uncontested findings excerpted above provide ample support for the conclusion that DCS has proven by clear and convincing evidence that there is a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of Child. The findings go well beyond whether Father can beat his substance abuse issue. They outline his failure to visit, failure to have stable housing or employment, failure to follow court orders, and his

criminal charges in three different counties for conduct alleged to have occurred since the CHINS petition. Our review of the record reveals overwhelming support for the findings as well as additional evidence to support termination. *See, e.g.*, Tr. Vol. 3 at 156 (Father’s admission that he has not financially supported Child since September 2019); *Id.* at 160-64 (Father’s admissions regarding his uncertain legal future). Since she was twenty-five days old and for days prior thereto, Child has been cared for by her aunt and her aunt’s husband, with whom she has “formed a tremendous bond.” *Id.* at 144. The aunt and uncle’s home is “the only home” Child knows. *Id.* Father points us to no bond between Child and himself.²

[13] “Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s survival. Rather, it is sufficient to show by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013) (citation omitted). Decisions to terminate parental rights “are among the most difficult our trial courts are called upon to make” and are very fact-sensitive. *E.M.*, 4 N.E.3d at 640. Based on the record before us, we cannot say that the trial court’s termination of Father’s parental rights to Child was clearly erroneous. *See K.T.K.*, 989 N.E.2d at 1234 (noting termination court’s discretion to assign lower weight to recent

² Apparently, the few visits that occurred were traumatizing to Child. Tr. Vol. 3 at 144.

sobriety while in prison away from temptations and everyday stressors); *see also* *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 96 & n.5 (Ind. Ct. App. 2014) (finding sufficient evidence of reasonable probability that continued relationship with father would pose threat to children's well-being where father's incarceration led to his missing significant part of children's development, children were connected with foster parents, and concern of traumatizing children existed). Accordingly, the trial court's termination order is affirmed.

[14] Affirmed.

Vaidik, J., and Altice, J., concur.