

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Dorothy Ferguson
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Assistant Section Chief, Civil
Appeals
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-
Child Relationship of C.S. &
Do.S. (Minor Children), and
Du.S. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

May 20, 2022

Court of Appeals Case No.
21A-JT-2497

Appeal from the Madison Circuit
Court

The Honorable Stephen J.
Koester, Judge

Trial Court Cause Nos.
48C02-2010-JT-12
48C02-2010-JT-13

May, Judge.

[1] Du.S. (“Father”) appeals the involuntary termination of his parental rights to C.S. and Do.S. (collectively, “Children”). Father presents multiple arguments, which we consolidate and restate as:

1. Whether the evidence supports Father’s challenged findings;
2. Whether the juvenile court’s findings support its conclusion that the continuation of the parent-children relationship was a threat to Children’s well-being; and
3. Whether the juvenile court’s findings supported its conclusion that there was a satisfactory plan for C.S.’s care and treatment following termination of Father’s parental rights.

We affirm.

Facts and Procedural History

[2] R.S. (“Mother”)¹ and Father (collectively, “Parents”) are married. Mother gave birth to C.S. and Do.S. on January 16, 2008, and January 27, 2015, respectively. In 2016, Father was charged with Level 1 felony² and Level 4 felony³ child molesting and with Level 4 felony incest.⁴ A juvenile court adjudicated Children as Children in Need of Services (“CHINS”) based on

¹ Mother’s parental rights to Children were also terminated but she does not participate in this appeal.

² Ind. Code § 35-42-4-3(a).

³ Ind. Code § 35-42-4-3(b).

⁴ Ind. Code § 35-46-1-3(a).

Father's criminal charges. On January 11, 2017, a juvenile court ordered Father to complete reunification services, but Father did not complete those services. On November 15, 2017, a juvenile court changed Children's permanency plan to reunification with Mother only and, after a successful trial home visit period with Mother, DCS moved to terminate its wardship over Children on April 27, 2018. The criminal charges against Father were dismissed without prejudice on August 27, 2018.

[3] On some date prior to August 17, 2019, Mother and Father allegedly engaged in sexual activity with Children. Mother contacted police and reported:

[S]he and Father had performed oral sex on [Do.S.] in bed uh that she was in bed as well um [Father] had her remove uh [Do.S.'s] pants um turned [Do.S.'s] body towards [Mother] and then moved [Mother's] head towards [Do.S.'s] penis um and had her perform oral sex on him. Um she also said that her and [Father] took turns performing oral sex um at one point [C.S.] was also brought into the room um and was in bed with them as well. I do not believe she disclosed performing oral sex on [C.S.] um but that she Father touched [C.S.'s] vagina during the time that time as well. . . she also informed me of another time where [Father] had offered [C.S.] uh a certain amount of money to allow him to feel her breasts or feel on her while he masturbated.

(Tr. Vol I at 36, 28.) On August 17, 2019, the Department of Child Services ("DCS") filed petitions alleging Children were CHINS based on Mother's report of molestation. Children were placed with paternal great aunt. The State then charged Father with child molesting a second time as the result of the new allegations.

[4] At some point after August 17, 2019, the criminal court entered a no-contact order between Father and Children based on Father’s criminal charges involving Children as the alleged victims. On December 3, 2019, the juvenile court held a fact-finding hearing⁵ regarding DCS’s petitions alleging Children were CHINS. The juvenile court adjudicated Children as CHINS the same day. On December 18, 2019, the juvenile court held its dispositional hearing and ordered Father to communicate with the Family Case Manager (“FCM”), complete all assessments and programs recommended by the FCM, assist in the formation and implementation of a safety plan to protect Children from abuse or neglect, obey the law, secure and maintain suitable housing and legal income, attend all visits with Children, participate in individual counseling and follow all recommendations, complete an anger management assessment and follow all recommendations, and participate in a batterer’s intervention program.⁶

[5] At some point in December 2019, the no-contact order was vacated because the charges against Father were dismissed. Father was granted supervised visitation with Children. Shortly thereafter, DCS petitioned the juvenile court to suspend Father’s visitation and the juvenile court granted that request. At

⁵ The record does not include the Chronological Case Summary for the underlying CHINS case. Therefore, we do not know when the trial court held its initial hearing, and other details of the underlying CHINS case are vague at best.

⁶ Father’s counsel successfully argued Father did not need to complete a psycho-sexual evaluation because Father had not yet been convicted of child molesting.

some point prior to February 12, 2020, Father regained supervised visitation with Children. The juvenile court held a review hearing on February 12, 2020, and the juvenile court found Father was non-compliant with home-based therapy and batterer's intervention services and had been discharged from supervised visitation with Children "due to unwillingness to complete a safety plan which prohibited sexual contact with [Children.]" (Ex. Vol. I at 25.)

[6] On August 5, 2020, the juvenile court held a review hearing and, in its order, found Father had not complied with Children's case plan and had not engaged in court ordered services. The juvenile court also found Children's permanency plan was "to be returned to . . . the custodial care of [Mother.]" (*Id.* at 22.) The trial court also noted C.S. had been removed from relative care and placed in "Emergency Shelter Care" and was "not progressing well in said placement." (*Id.* at 21.) Relative placement had expressed "concern about [C.S.'s] behaviors and desire to engage in sexual acts." (*Id.*) On August 24, 2020, the juvenile court held a review hearing and, in its order, noted Father "has not complied with [Children's] case plan. Father has not been compliant with home-based therapy, batterer's intervention services, and his visitation with [Children] has been suspended by the Court." (*Id.* at 18.) The juvenile court changed Children's permanency plan to concurrent plans of reunification with Mother or adoption.

[7] On February 1, 2021, DCS filed its petitions to terminate Parents' parental rights to Children based on non-compliance with court-ordered services. On

February 24, 2021, the juvenile court held a review hearing and found Father had

not complied with [Children's] case plan. Father has not been engaged in home based therapy, counseling, visitation, or batterer's intervention program. . . [Father] has not enhanced [his] ability to fulfill [his] parental obligations. Father has not enhanced his ability to fulfill his parental obligations by refusing to engage in any of his court-ordered services.

(*Id.* at 11-12.) The juvenile court held fact-finding hearings on June 15 and July 22, 2021. DCS presented evidence and testimony regarding Father's noncompliance with services, Children's current placements and advancements outside of Father's care, and an additional ongoing investigation into a third molestation allegation in which Father's alleged victim was his girlfriend's child. On October 13, 2021, the trial court issued its order terminating Parents' parental rights to Children.

Discussion and Decision

[8] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile 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. *In re L.S.*,

717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied* 534 U.S. 1161 (2002).

[9] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[10] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (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.

Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations. *In re G. Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*.

“[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply with the statute terminating parental rights.” *Platz v. Elkhart Cnty. Dep't of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

1. Challenged Findings

[11] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to

support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

A. Finding 20⁷

[12] Father challenges Finding 20, which states: “The certified Children in Need of Services records were entered into evidence for causes 48C02-1908-JC-000333 and 48C02-1908-JC-000334.” (App. Vol. II at 23.) Father argues this finding is not supported by the evidence:

The Court did take judicial notice of the underlying child in needs of services cause of action, however, the evidence presented in preliminary juvenile matters do not utilize the rules of evidence and there, DCS would have to prove each of the elements in the Petition to Terminate Parental Rights rather than relying on the orders of the underlying child in need of services action as evidence to prove those facts. As such, the Court cannot rely on those orders unless the facts contained and conclusions are supported by the evidence admitted at the termination fact-finding hearing, which it was not.

⁷ Father cites this finding as Finding 22, which states: “Father has refused to engage in any services related to the sexual abuse allegations.” (App. Vol. II at 24.) However, his argument concerns the court’s admission of and reliance on these records, which is indicated in Finding 20.

(Father's Br. at 7.) However, as the State points out, the certified CHINS records and some of the relevant evidence in the CHINS matter **were** admitted into evidence at various times during the termination fact-finding hearings. (*See* Tr. Vol. I at 92 (admission of certified record of underlying CHINS case); *id.* at 52-3 (admission of certified record of 2016 CHINS case).) Thus, Father's argument fails because the records were properly admitted before the juvenile court during the fact-finding hearings. Additionally, Father has not cited case law to support his contention that the rules of evidence do not apply to CHINS proceedings and thus his argument is waived for failure to cite authority and failure to make a cogent argument pursuant to Indiana Appellate Rule 46(A)(8)(a). *See In re A.G.*, 6 N.E.3d 952, 957 (Ind. Ct. App. 2014) (failure to cite authority results in lack of cogent argument prompting waiver).

B. Findings 23 and 24

[13] Father challenges Findings 23 and 24, which state: "Father has had only partial involvement with service providers since the case's inception" and "Father has not consistently participated in dispositional services ordered for the benefit of [Children]." (App. Vol. II at 24.) Father argues these findings are not supported by the evidence because the

Court fail[ed] to acknowledge in its findings that the partial involvement was due to DCS failing to put in a referral for parenting assessment and [Father's] referral for counseling got sent back due to no vacancy. And that DCS failed to find a new visitation supervisor after [Father] had ONLY one visit because DCS intent was to request that visitation be suspended. Father complied with all other services.

(Father's Br. 13-14) (emphasis in original) (citations to the record omitted). As an initial matter, we note that "failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law." *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009). Thus, we reject the portion of Father's argument that asserts DCS did not offer certain services as part of the CHINS case.

[14] During the fact-finding hearings, Father's mental health therapist testified Father attended some sessions with her but did not successfully complete counseling because he had "no contact" with her and at his last session he indicated "he didn't have a lot to talk about" and he "wanted to get his kids back um and that he felt everything was okay." (Tr. Vol. I at 34.) Father testified he did not complete his parenting assessment because he "talked to [the Family Case Manager] and she asked me if I needed any of those types of things and I explained to her the reason why no [sic]." (*Id.* at 189.) Father also testified he had not completed a batterer's intervention program. Additionally, DCS presented evidence that Father was not allowed visitation with Children because he refused to create a safety plan to prevent him from touching Children inappropriately during visitation. As DCS presented evidence Father had not completed services and Father acknowledged he had not completed services, we cannot say the evidence failed to support the trial court's findings. Father's contrary argument is an invitation for use to reweigh the evidence or judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804

N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

C. Finding 25

[15] Father also challenges Finding 25, which states: The child [C.S.] testified in open court that Father had raped and molested her.” (App. Vol. II at 24.) Father calls into question C.S.’s credibility, contending “the child also testified that she had not caused her placement disruption. And this is the same child that previously stated that she had been molested by [Father] and then recanted the story.” (Father’s Br. at 14.) At the fact-finding hearing, C.S. testified she wanted the court to terminate her parents’ parental rights because “[Father] raped me molested me and [Mother] she molested me and my brother.” (Tr. Vol. I at 19) (errors in the original). When asked about whether she had essentially been coached when she reported Father molested and raped her, C.S. replied, “I know what happened and I know it’s true and that’s what I say.” (*Id.* at 20.)

[16] Additionally, C.S.’s therapist noted she was moved from her original placement because C.S.’s “sexually acting out behavior was putting other children in the home in danger . . . [by] cornering [Do.S.] in the home to fondle him and his privates and there was an incident with um another Grandchild of the families.” (*Id.* at 47-8) (errors in original). The therapist also indicated C.S. had engaged in self-harming behavior and “expressing that she heard voices.” (*Id.* at 48.) C.S. was eventually placed in an inpatient treatment facility to help her deal with her trauma. Father’s argument is an invitation for us to reweigh

the evidence or judge the credibility of witnesses, which we cannot do. *See In re D.D.*, 804 N.E.2d at 265 (appellate court cannot reweigh evidence or judge the credibility of witnesses).

2. Continuation of Parent-Children Relationship a Threat to Children’s Wellbeing

[17] Father argues the juvenile court’s findings do not support its conclusion that the continuation of the parent-children relationship posed a threat to the well-being of the children pursuant to Indiana Code section 31-35-2-4(b)(1)(B)(ii). We note Indiana Code section 31-35-2-4(b)(1)(B) is written in the disjunctive, such that the trial court need find only one of the three elements to be true. *See In re L.S.*, 717 N.E.2d at 209 (because statute written in disjunctive, court needs to find only one requirement to terminate parental rights). Father does not challenge the juvenile court’s conclusion that the conditions under which Children were removed from his care would not be remedied, which is one of the three elements in Indiana Code section 31-35-2-4(b)(1)(B). Therefore, we need not address that argument as one of the three requirement elements has been satisfied.⁸

⁸ Father also argues that “DCS and the [juvenile] court overlooked [Father’s] due process rights in the child in need of services matter which carried over into the termination of parental rights matter.” (Father’s Br. at 13.) However, Father did not indicate how his due process rights were violated in either the CHINS or the termination proceedings. Thus, the issue is waived for failure to make a cogent argument. *See* Indiana Appellate Rule 46(A)(8) (arguments on appeal must contain cogent argument); *and see In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to make a cogent argument waives issue from appellate consideration), *trans. denied*.

3. Satisfactory Plan for Placement of C.S.

[18] Pursuant to Indiana Code section 31-35-2-4(b)(2)(D), parental rights cannot be terminated unless DCS provides sufficient evidence of a satisfactory plan for the care and treatment of the children following termination. Father argues that, because DCS did not present a definitive plan for placement of C.S., she would essentially be an “orphan” if Father’s parental rights to her were terminated. (Father’s Br. at 17.) It is well-settled:

Indiana courts have traditionally held that for a plan to be “satisfactory,” for the purposes of the termination statute, it “need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *Lang v. Starke Cnty. Office of Family and Children*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*. A DCS plan is satisfactory if the plan is to attempt to find suitable parents to adopt the children. *Id.* In other words, there need not be a guarantee that a suitable adoption will take place, only that DCS will attempt to find a suitable adoptive parent. *See id.* Accordingly, a plan is not unsatisfactory if DCS has not identified a specific family to adopt the children. *Id.* Part of the reason for this is that it is within the authority of the adoption court, not the termination court, to determine whether an adoptive placement is appropriate. *See In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001), *trans. denied*.

In re A.S., 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014), *trans. denied*.

[19] In its order, the juvenile court indicated C.S. was “currently placed in a foster placement” and DCS “hopes the foster placement is a pre-adoptive home for [C.S.]” (App. Vol. II at 25.) We considered a similar arrangement in *In re*

B.D.J., 728 N.E.2d 195 (Ind. Ct. App. 2000). In *B.D.J.*, the trial court concluded there existed a satisfactory plan for the care and treatment of the children based on the family case manager’s testimony that “[t]he foster parents have expressed some interest. If that does not work out, the children’s – the children have already been turned over to the special needs adoption team and their names have been placed there.” *Id.* at 204. Our court determined the plan was satisfactory. *Id.*

[20] Here, Family Case Manager Fadrica Wimsatt testified on direct examination:

[DCS]: What is the plan for [C.S.]?

[Wimsatt]: Right now uh the plan is to look for a foster home that is pre-adoptive and that is willing to adopt her.

[DCS]: Okay and where is the Department at in that process of finding uh a potential placement?

[Wimsatt]: Uh right now our foster care specialist is currently still looking. Uh it’s been two or three weeks since she started that process um and she has not been able to find anyone yet.

* * * * *

[DCS]: . . . Would a a termination of parental rights uh give the foster care specialist more tools to locate a permanent placement for [C.S.]?

[Wimsatt]: Yes.

(Tr. Vol. I at 102-3) (errors in original). On cross-examination, Wimsatt testified:

[Father's Counsel]: Okay so you have to identify a family for her to be placed with and then she has to do family therapy with that placement before she can actually go there?

[Wimsatt]: Yes, that is um of her request and her therapists request as well.

[Father's Counsel]: Okay so how I mean how long are are you thinking in terms of a timeframe before [C.S.] is going to have at least an identified home to go to?

[Wimsatt]: I would say approximately another month?

[Father's Counsel]: Okay I mean have you have you worked with other children who have um the diagnosis that [C.S.] has?

[Wimsatt]: Yes I have.

[Father's Counsel]: Okay so apt is it that um you are going to that people who are licensed pre-adoptive homes want a child in [C.S.'s] condition.

[Wimsatt]: Um it's not very likely.

[Father's Counsel]: Okay so would it be fair to say that it is probably not very likely that you are going to find a pre-adoptive home for her?

[Wimsatt]: Um I would say so yes.

[Father's Counsel]: Okay, so but even though she may never find her forever home, you believe it's going to be in her best interest that she be orphaned?

[Wimsatt]: It's in her best interest to be adopted yes.

[Father's Counsel]: Okay I understand it's in her best interest to be adopted absolutely sure if parental rights are terminated, but based on the information that you know and your experience working with children, such as [C.S.], do you believe its going to best for her to linger in the system and for her to be orphaned?

[Wimsatt]: No no I don't.

[Father's Counsel]: Okay and do you I mean in all honesty is that probably a realistic outcome for [C.S.]?

[Wimsatt]: Correct.

[Father's Counsel]: And did you only being the process in terms of looking for an adopted home because you were um getting ready for the termination here today?

[Wimsatt]: No ma'am.

[Father's Counsel]: Okay then why did you wait um two to three weeks prior to the termination to look for a pre-adoptive home placement for [C.S.]?

[Wimsatt]: Because her therapist and her uh caseworker at Wormley told me that we should start preparing to look for placement for her.

(*Id.* at 116-8) (errors in original). Similarly, the Court Appointed Special Advocate (“CASA”), Moriah Fairer, testified that she believed DCS had an appropriate plan for C.S.’s care and supervision following termination. She additionally testified:

[DCS]: Alright um Ms. Ms. Ferguson [Father’s counsel] made a point of uh calling termination orphaning [C.S.], um do you believe that [C.S.] having parental rights terminated is better or work than her return to the the folks she says molested her?

[Fairer]: I think it is better for the the termination of parental rights to happen.

[DCS]: Okay. As these children’s CASA for what a year and a half, what do you believe is in their interest?

[Fairer]: I believe it is in their best interest um to be adopted out and to have a family that cares for them appropriately and for them to continue to thrive uh as young (INAUDIBLE) into young adulthood.

[DCS]: Alright, um and again we are just going to go with Ms. Ferguson’s hypothetical, uh would it be um in [C.S.’s] best interest to have her parental rights terminated, even if she remained in the system and and aged out through a collaborative care program?

[Fairer]: I do not believe that will happen, but yes I do believe it is in the best interest for termination. It will be my focus to make sure and ensure that she has um placement.

(*Id.* at 129-30) (errors in original). While DCS had not located placement for C.S. because she was still in a treatment facility to address her trauma, like in *B.D.J.*, it was committed to finding C.S. permanent placement and the plan for C.S. was adoption. Therefore, we hold that the juvenile court's findings support its conclusion that DCS had a satisfactory plan for the care and treatment of C.S. following the termination of Father's parental rights.

Conclusion

[21] Evidence existed to support the juvenile court's findings challenged by Father. Additionally, we need not consider Father's argument that the trial court's findings do not support its conclusion that the continuation of the parent-children relationship poses a threat to Children's well-being because he does not challenge either of the other two elements of the relevant statute, which is written in the disjunctive. Finally, the trial court's findings support its conclusion that there is a satisfactory plan for C.S.'s care and treatment following the involuntary termination of Father's parental rights. Accordingly, we affirm.

[22] Affirmed.

Riley, J., and Tavitas, J., concur.