

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of Parent-
Child Relationship of:

S.M. & M.M. (Minor Children),
and

J.M. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

December 15, 2021

Court of Appeals Case No.
21A-JT-1548

Appeal from the Howard Circuit
Court

The Honorable Lynn Murray,
Judge

Trial Court Cause Nos.
34C01-2103-JT-137, 34C01-2103-
JT-138

Altice, Judge.

Case Summary

- [1] J.M. (Father) appeals the involuntary termination of his parental rights to S.M. and M.M. (Children). He contends that, because the Children were not in his care at the time of their removal, the court did not have authority to order him to participate in services, and, therefore, the termination order, which was based in part on his lack of participation in services, was clearly erroneous.
- [2] We affirm.

Facts & Procedural History

- [3] Father is the legal father of M.M. (born in February 2009) and an alleged father of S.M. (born in March 2018). Children first came under the care of the Indiana Department of Child Services (DCS) in November 2018 when DCS started an informal adjustment with Children's mother, B.R. (Mother), to address substance abuse. When Mother was arrested days later, Father was incarcerated in another county on a neglect of a dependent charge, and there was a no-contact order between Father and M.M. Children were placed with grandparents (Maternal Grandparents), and, in January 2019, the court adjudicated them children in need of services (CHINS). During the CHINS case, Father was resistant to the State's intervention in his life. Father had some visits with M.M. but he refused to follow rules and had outbursts. He would not engage in paternity testing for S.M. In November 2019, Children

were returned to Mother's care after she completed recommended services, and the CHINS case was closed.

[4] About two months later, DCS received several reports of child neglect and drug use by Mother, and following assessments, DCS again removed Children from Mother's home. On January 31, 2020, DCS filed petitions alleging that Children were CHINS based on, among other things, allegations of substance abuse by Mother, a warrant being issued for her arrest, and M.M. missing school. DCS contacted Father who stated that he did not agree with DCS becoming involved and advised that he did not have proper accommodations for Children to stay with him. Children were placed back with Maternal Grandparents. Father generally failed to cooperate with DCS. In the summer of 2020, he tested positive on three occasions for methamphetamine and amphetamine. On July 27, 2020, the parties appeared for a factfinding hearing, where Mother and Father stipulated that Children were CHINS.

[5] At the August 24 dispositional hearing, the court ordered Father to participate in reunification services. By November, Father had not complied with Children's case plan, not visited Children, and not cooperated with DCS. He was discharged from some referrals due to non-participation.

[6] As of the January 25, 2021 permanency hearing, Father still was not participating in services and was not visiting Children. Father maintained he was exempt from having to comply with court-ordered services because, as he

repeatedly told DCS, he was “the non-offending parent.” *Exhibits Vol. 4* at 66. The court changed the permanency plan to include adoption.

[7] On March 8, 2021, DCS filed a petition for termination of Father’s parental rights to Children. An April 19 review hearing revealed that Father was still refusing to participate with any service provider and had not visited Children. The court’s order noted that, while “Father believes it is not his responsibility to comply with DCS” because Children had been removed from Mother’s home, “[t]he children were [] removed from both parents.” *Id.* at 69.

[8] The court held a factfinding hearing on May 27. Those who testified included Father, Mother, M.M., DCS family case managers (FCM), and Maternal Grandfather. In addition, the court-appointed special advocate (CASA) testified and stated that Father had not participated in services, he blamed Mother for their removal, he prioritized drug use over Children, and when she did speak to Father “it was very little about his children and more about how [] he has been violated by the courts.” *Transcript* at 130. She testified that termination was in Children’s best interests. The recent FCM also testified that she believed termination and adoption was in Children’s best interests. M.M., who was twelve years old, testified that she did not feel safe around Father and wanted to live with Maternal Grandparents.

[9] On June 21, 2021, the court entered detailed findings of fact and conclusions of law, terminating Father's parental rights to Children.¹ The court's twenty-two-page order included:

41. Father has failed to remedy the reasons for removal: namely, Father has proven his inability to soberly care for his Children, to adequately address his substance abuse and addiction, and to maintain [] stable mental health. . . . [Father] chose defiance over his own progress and reunification. At the time of removal in this case, he refused to take placement of Children. But now he seeks to stop their permanency because they were not literally taken out of his care, but rather, Father fails to see that the best interest of his Children are not served by ignoring his own addictions, dangerous choices, and mental health.

...

44. The actions of Father have inflicted serious mental harm to these young Children, especially child M.M. And there is no indication that Father is finished with his addiction or criminal behaviors.

...

50. ... Father has avoided working at all with DCS, has maintained his drug abuse, and has turned his nose at the prospect of any wrong doing on his behalf. He has refused to address any of the myriad issues articulated by his own daughter relating to his violence, his temperament, and his drug and

¹ Mother's rights were also terminated but she does not participate in this appeal.

alcohol abuse. He had taken no responsibility for his own actions, his own addictions, and the loss of his Children.

Appellant's Appendix Vol. 3 at 20-23. Father now appeals.

Discussion & Decision

[10] Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). When reviewing the termination of parental rights, we consider the evidence in the light most favorable to the prevailing party, and we will not reweigh the evidence or judge the credibility of the witnesses. *Matter of M.I.*, 127 N.E.3d 1168, 1170 (Ind. 2019). To prevail, the challenging party must show that the court's decision is contrary to law, meaning that the probative evidence and reasonable inferences point unerringly to the opposite conclusion. *Id.*

[11] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, 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)(B), (C), (D); Ind. Code § 31-37-14-2.

[12] Father does not directly challenge the court's conclusions that (1) there was a reasonable probability that the conditions that led to the removal and to the continued placement outside the home would not be remedied; (2) the continuation of the parent-child relationships posed a threat to Children's well-being; (3) termination of the parent-child relationships was in Children's best interests; and (4) that there was a satisfactory plan for the care and treatment of Children. *Appellant's Appendix Vol. 3* at 24-26.

[13] Father appears to challenge Finding 36, which states, in part:

[Father], by contrast, has not had the Children in his care for years. He has stubbornly maintained that he has not done anything which would justify his need to complete services. . . . His defiance and stubborn will trumped his desire to reunite with his young girls.

Id. at 19. He does not argue that the evidence does not support the finding; rather, his argument is that, because Children were initially removed from *Mother's* home due to her acts or omissions, the court did not have authority to order *him* to participate in services or to terminate his parental rights. He argues that the trial court “had no legal right or authority to interfere with [his] life and/or order him to do anything,” and therefore, we should reverse the termination of his parental rights.² *Appellant's Brief* at 8. His position is without merit.

[14] When Children were removed from Mother's home in January 2020, Father advised DCS that he was unable or unwilling to care for Children. As there was no parent available or willing to care for them, they were placed with Maternal Grandparents. While Father suggests Children were only removed from Mother's care, under these circumstances, “there is no question that [Children were] constructively removed from Father” as well. *See In re A.G.*, 45 N.E.3d 471, 477 (Ind. Ct. App. 2015) (although child was previously removed from mother, child was later constructively removed from father when paternity was established but DCS was unable to return child to father because he was incarcerated), *trans. denied*.

² Father's counsel noted the difficulty he experienced in discerning and presenting appellate arguments on Father's behalf due to Father's failure and refusal to “discuss or dispute the [] Court's findings or conclusions” with counsel and his failure to respond to letters, emails, and voice mails from counsel. *Appellant's Brief* at 4, 6. Counsel sought leave to withdraw, which the trial court denied.

[15] At the end of January 2020, DCS filed a petition alleging that Children were CHINS. Father was a party to that CHINS action. *See* Ind. Code § 31-34-9-7 (providing that the “child’s parents” are among those who are parties to juvenile law proceedings). On July 27, 2020, Children were adjudicated CHINS, and the court clearly had the authority to order Father to participate in reunification services. *See* I.C. § 31-34-19-1 (stating that once a court finds that a child is a CHINS, it shall hold a dispositional hearing to consider, among other things, “[t]he necessity, nature, and extent of *the participation by a parent*, . . . in the program of care, treatment, or rehabilitation for the child”); I.C. § 31-34-19-10 (stating that the court shall issue findings and conclusions concerning, among other things, “the need for *participation by the parent* . . . in the plan of care for the child”) (emphases added).

[16] Father’s continued failure to participate in the court-ordered services led to the filing of a petition for termination of his parental rights under Ind. Code Chap. 31-35-2. Termination of parental rights proceedings, while separate from CHINS proceedings, are governed by the procedures set forth in the CHINS chapter. *See* I.C. § 31-35-2-2. Again, Father was a parent and a party to the termination proceedings and, if he desired to reunite with Children, he needed to participate in services.

[17] Even if we were to accept Father’s argument that he had no role in Children’s initial removal – and we do not – I.C. § 31-35-2-4(b)(2)(B) concerns not only the reasons for removal “but also those bases resulting in continued placement outside the home.” *See Matter of K.T.* 137 N.E.3d 317, 327 (Ind. Ct. App.

2019). Here, Children's continued removal and continued placement with Maternal Grandparents throughout the duration of the proceedings was due, at least in part, to Father's defiance and unwillingness to participate in court-ordered services.

[18] The trial court's order terminating Father's parental rights to Children was not clearly erroneous.

[19] Judgment affirmed.

Bailey, J. and Mathias, J., concur.