MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:
E.G. (Minor Child),

and

T.G. (Mother) and
M.G. (Father),

Appellants-Respondents,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

June 2, 2022

Court of Appeals Case No. 21A-JT-2917

Appeal from the Cass Circuit Court

The Honorable Stephen R. Kitts, II, Judge

Trial Court Cause No. 09C01-2109-JT-14

Weissmann, Judge.

[1] Both T.G. (Mother) and M.G. (Father) have been diagnosed with several different mental illnesses and are cognitively disabled. Sadly, their son, E.G., was born with a myriad of medical conditions, including chromosome, heart, and digestive abnormalities. Two-year-old E.G. is fed solely through a tube into his stomach and requires round-the-clock care by specially trained individuals.

[2] Mother and Father (collectively, Parents) have never cared for their child by themselves. Due to Mother's repeated incarcerations, Father's recalcitrance, and alleged transportation issues, Parents irregularly visited E.G. since his birth more than two years ago. They still lack a home appropriate for E.G.'s special needs and have failed to complete services aimed at preparing them to care for E.G., leading ultimately to termination of their parental rights. Finding no error in the trial court's order terminating parental rights, we affirm.

Facts

[3] Mother gave birth to E.G.—Mother's sixth child and Father's first—in late 2019. Four of Mother's other children live with their guardian (Maternal Grandmother), and one child is in a group home. Two months after E.G.'s birth, the Indiana Department of Child Services (DCS) petitioned for a finding that E.G. was a child in need of services (CHINS). DCS alleged that E.G. was endangered by Parents' inability or refusal to provide necessary care to E.G. or their neglect of that duty. *See generally* Ind. Code § 31-34-1-1.

[4] In support of its conclusion that E.G. was a CHINS, the CHINS court found that:

- E.G. had been diagnosed with Trisomy 21 (commonly known as Down Syndrome), respiratory insufficiency, microcephaly, endocardial cushion effect, general feeding issues, and sleep apnea.
- E.G. received food via a g-tube and required a sleep apnea monitor.
- Parents did not attend all of the required training sessions aimed at teaching them how to care for E.G.'s extensive medical needs. They always were late to the sessions they did attend.
- Parents informed hospital personnel that they did not intend to maintain E.G. on oxygen or feed him via g-tube after his release from the hospital, despite contrary medical requirements.
- Parents lacked stable housing.
- Parents lack stable housing and currently live with Paternal Grandfather in an unsanitary home where several people smoke[,] and that is unsafe for E.G.

Exhs. Vol I, p. 12.

[5] The CHINS court ordered Parents, among other things, to: 1) participate in services recommended by DCS; 2) maintain suitable, safe, and stable housing; 3) take prescription medicine only as prescribed; 4) obey the law; 5) complete home-based services; 6) complete a psychological evaluation; 7) meet all of E.G.'s medical needs; and 8) attend all scheduled visitations.

[6] Parents violated much of the order. They visited E.G. only sporadically when they were restricted to virtual visits due to COVID-19. Once that limitation lapsed, they visited E.G. in person only twice during an eight-month period. They largely blamed their absences on transportation issues caused by their running out of money due to eating at restaurants.

[7] Father failed to take his medication as prescribed, leading to an incident in which Mother stabbed his thumb with a knife due to his "out-of-control" behavior. Tr. Vol. II, p. 101. Father, who had suffered from mental illness since childhood, had been diagnosed with bipolar disorder, schizophrenia, anxiety, depression, and a learning disability. His IQ was 70. Mother also had been diagnosed with bipolar disorder and schizophrenia.

[8] Neither parent completed homebased care services. Father consented to a voluntary termination of his parental rights but later changed his mind. Mother was jailed at least twice on criminal charges, including felony intimidation, and ultimately placed on probation. Father also was arrested during the CHINS proceedings and placed on probation for battery on a relative.

[9] After five months in a neonatal intensive care unit, E.G. underwent heart surgery and then was released into foster care. His foster parents are a neonatal intensive care unit nurse who cared for E.G. briefly during his hospitalization and her husband. By the time E.G. was 2 years old, he still could not walk, continued to be fed exclusively through a tube, and likely would need tube

feedings for several more years. He engaged in a myriad of therapy and medical appointments weekly.

[10] DCS ultimately petitioned to terminate Mother's and Father's parental rights. After a hearing, the trial court granted the petition, concluding DCS proved all the required statutory factors. App. Vol. II, pp. 89-90. Parents jointly appeal that judgment.

Discussion and Decision

[11] Parents claim the findings do not support the trial court's conclusions and judgment terminating their parental rights. They specifically attack ten findings as unsupported by the evidence and assert that the remaining findings are inadequate to support the judgment.

I. Standard of Review

[12] Termination is proper only when DCS alleges and proves by clear and convincing evidence:

> (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.

Ind. Code § 31-35-2-4(b)(2); *see also* Ind. Code § 31-37-14-2.

[13] We do not reweigh evidence or judge witness credibility when reviewing the termination of parental rights. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Applying a two-tiered standard of review, we determine whether the evidence supports the findings before deciding whether the findings support the judgment. *Id.* We set aside the judgment only if it is clearly erroneous. *Id.*

II. Challenge to Findings

[14] Parents challenge ten findings. We reject Parents' claims of error as to nine of those findings, find the 10th to be harmless error, and affirm the judgment.

A. Findings B(1)5, 6, 7, 10, 11, 14, 15, and 16

[15] Parents contend the only evidence supporting Findings B(1)5-7, 10-11, and 14-16 are exhibits of which the trial court took judicial notice. Parents argue that the trial court cannot base substantive findings solely on facts alleged in judicially noticed court filings.

[16] But the trial court never took judicial notice of any exhibits. The parties stipulated to admission of the exhibits at issue—that is, Exhibits A through D1, which consist of certified records of the CHINS proceedings and Parents' criminal prosecutions. Tr. Vol. II, p. 4; Exhs. Vol. I, pp. 5-95. The trial court admitted these exhibits based on the parties' stipulation. Tr. Vol. II, p. 4.

Further, when DCS offered the stipulated exhibits, Parents stated they did not object. *Id.* The trial court properly based the challenged findings on the stipulated evidence. *See Inland Steel Co. v. Pavlinac*, 865 N.E.2d 690, 699 (Ind. Ct. App. 2007) (affirming trial court's judgment after determining findings were properly based on stipulated evidence). As Parents do not challenge these ten findings on any other basis, we find no error.

B. Finding B(1)(17)

[17] Parents also contest the trial court's finding that Mother "has previously refused to sign consent for procedures deemed medically necessary for the Child's well-being." App. Vol. II, p. 88. According to parents, they merely objected to the removal of E.G.'s adenoids because the procedure required using anesthesia very soon after E.G. had undergone anesthesia for insertion of tubes in his ears. That may be true, *see* Tr. Vol. II, p. 105, but the record still establishes that Mother refused to consent to the adenoid surgery, necessitating the court order it. *Id.* The evidence supports Finding B(1)(17).

C. Finding B(1)(9)

[18] Parents claim the trial court erroneously found that "Mother and Father have had only two face to face visits with the child since removal." App. Vol. II, p. 87. Parents point to various evidence showing they visited E.G. much more than that while he was hospitalized.

[19] The dispute appears to be over timing. E.G. first was removed from Parents while he was hospitalized about two months after his birth. He did not leave the

hospital for three more months. Although Parents visited E.G. in person in the hospital many times and occasionally visited him virtually during the next two years, they only visited him twice in person after his release from the hospital. Tr. Vol. II, p. 76. Any error in Finding B(1)(9) is harmless, however. The crux of the finding was that Parents' in-person visits with E.G. had been minimal for a long time prior to the termination hearing. The record supports that view. *Id.* But even if we exclude Finding B(1)(9), the remaining findings are sufficient to support the judgment. *In re O.G.*, 159 N.E.3d 13, 19 (Ind. Ct. App. 2020) (affirming termination of parental rights after determining errors in findings were not significant), *trans. denied*.

[20] As Parents attack only the findings, and we find only one harmless error within those findings, Parents have not established any grounds for setting aside the court's judgment. We affirm the trial court's judgment terminating their parental rights.

Robb, J., and Pyle, J., concur.