

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of J.C.-M., et al.
(Minor Children)

and

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

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

March 22, 2021

Court of Appeals Case No.
20A-JT-1882

Appeal from the Shelby Superior
Court

The Honorable R. Kent Apsley,
Judge

Trial Court Cause Nos.
73D01-1912-JT-12
73D01-1912-JT-13
73D01-1912-JT-14

Bailey, Judge.

Case Summary

- [1] J.S. (“Father”) appeals the termination of his parental rights to his three children, J.C.-M, A.C.-S, and K.C., (“Children”), upon the petition of the Shelby Department of Child Services (“the DCS”). He presents the sole issue of whether the DCS established, by clear and convincing evidence, that termination of his parental rights is in Children’s best interests. We affirm.

Facts and Procedural History

- [2] Father and H.C. (“Mother”) had three children, born in 2012, 2014, and 2018. Mother gave birth to the youngest child in the back seat of a vehicle. When she received medical care, she tested positive for methamphetamine. Father was arrested on an unrelated matter. Children were placed in foster care with Father’s sister and her husband (“Foster Parents”).
- [3] On January 19, 2018, the DCS filed a petition alleging Children to be Children in Need of Services (“CHINS”). On March 22, 2018, Children were adjudicated CHINS. The initial plan for Children was parental reunification with a concurrent plan of guardianship. Father was ordered to participate in services to address drug dependency, but his participation was sporadic, and he was intermittently incarcerated. On January 6, 2020, the DCS petitioned to terminate Mother’s and Father’s parental rights. On August 31, 2020, the trial court conducted a fact-finding hearing, at which Father did not appear. Mother appeared, briefly testified, and agreed to termination of her parental rights and

adoption of the Children by Foster Parents. On September 11, 2020, the trial court entered its findings, conclusions, and order terminating parental rights. Father now appeals.¹

Discussion and Decision

Standard of Review – Sufficiency of the Evidence

[4] When we review whether the termination of parental rights is appropriate, we will not reweigh the evidence or judge witness credibility. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016). We will consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* In so doing, we give “due regard” to the trial court’s unique opportunity to judge the credibility of the witnesses. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing Indiana Trial Rule 52(A)). We will set aside the trial court’s judgment only if it is clearly erroneous. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). In order to determine whether a judgment terminating parental rights is clearly erroneous, we review the trial court’s judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *I.A.*, 934 N.E.2d at 1132.

¹ Mother is not an active party to this appeal.

Requirements for Involuntary Termination of Parental Rights

[5] “The Fourteenth Amendment to the United States Constitution protects the traditional 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). Although parental rights are of a constitutional dimension, the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). The State is required to prove that termination is appropriate by a showing of clear and convincing evidence, a higher burden than establishing a mere preponderance. *In re V.A.*, 51 N.E.3d at 1144.

[6] Indiana Code section 31-35-2-4(b)(2) sets out the elements that the DCS must allege and prove by clear and convincing evidence to terminate a parent-child relationship:

- (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 local office 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.

Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the court need only to find that one of the three 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).

Analysis

- [7] Father contends that insufficient evidence supports the termination decision. He focuses solely upon whether there is clear and convincing evidence that termination of his parental rights is in the best interests of Children. He opines that guardianship is a better alternative.

- [8] In determining what is in a child's best interests, the court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. Here, the Court Appointed Special Advocate and family case manager opined that adoption was in Children's best interests. Foster Parents wished to adopt Children, and Children appeared bonded to Foster Parents and their four biological children, who are Children's cousins. Father did not appear at the termination hearing to provide evidence of his current circumstances. Mother testified that she had "left [Father] at the house" where he was "high" on methamphetamine. (Tr. Vol. II, pg. 81.) He had last seen Children approximately eight months earlier.
- [9] There is ample evidence that Father has historically been unable or unwilling to fulfill his parental responsibilities. During the pendency of the CHINS proceedings, he was convicted of Level 6 felony possession of Methamphetamine and two misdemeanors. Father was placed in a rehabilitation facility and appeared to be making progress; however, he left the facility under unauthorized circumstances, violating his probation. Father was again incarcerated. He failed to maintain contact with the DCS and provide a current address. When the family case manager sent approximately twenty e-mails to arrange visits or drug screens, Father's typical response was "beyond profane." (Tr. Vol. II, pg. 115.) He verbally harassed and threatened both the foster mother and family case manager. Under the influence of methamphetamines, he tried to engage the foster mother in a physical fight. Family case manager Duane Tripp, who had known Father for approximately

two and one-half years, described Father as “an addict who responds with rage.” (*Id.* at 129.)

- [10] Father suggests that guardianship is a viable and preferable alternative to termination of his parental rights because the foster mother is his sister and willing to continue to care for Children without adoption. However, the foster mother testified that she thought Father was trying to evade drug screens and wanted to come in and out of Children’s lives as he pleased. The foster mother preferred adoption, with the expectation that she would let Father see Children if he became drug-free. Father points to no authority – nor are we aware of any such authority – that he may abdicate his parental responsibilities but dictate the circumstances of his children’s placement.

Conclusion

- [11] The DCS established by clear and convincing evidence that termination of parental rights is in Children’s best interests.
- [12] Affirmed.

Robb, J., and Tavitas, J., concur.