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IN THE
COURT OF APPEALS OF INDIANA

T.A.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 14A05-0903-JV-128
	)	
DAVIESS COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DAVIESS CIRCUIT COURT
The Honorable Timothy Crowley, Special Judge
Cause No. 14C01-0710-JT-295

September 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

T.A. ("Father") appeals the termination of his parental rights as to his minor child, O.A.

We affirm.

ISSUES

1. Whether there was clear and convincing evidence to support the termination of Father's parental rights.

2. Whether the trial court erred in denying Father's motion to dismiss the petition to terminate his parental rights.

3. Whether the trial court erred in allowing O.A.'s mother to terminate her parental rights.

FACTS

Father and J.G. ("Mother") have never been married but have been in a relationship and have lived together, off and on, for several years. They are the parents of O.A., who was born on October 28, 2005. At the time of O.A.'s birth, Mother had two older children; however, Mother's parents have legal guardianship of the older children.[1] Shortly after birth, O.A. tested positive for marijuana and hydrocodone.

On or about December 14, 2005, Mother agreed to a program of informal adjustment ("IA") with the Daviess County Department of Child Services ("DCS"). Among other things, she agreed to random drug tests and treatment for substance abuse. Mother, however, never submitted to the requested drug tests.

[1] The older of the two is Father's son. Thus, O.A. has one full-sibling and one half-sibling. Mother had agreed to guardianship after the filing of a petition alleging them to be children in need of services due to Mother's drug use.

On February 7, 2006, Mother was arrested on a petition to revoke a suspended sentence and remained in the custody of the Daviess County Sheriff's Department until April 10, 2006. Upon Mother's release and at her request, DCS extended the IA on May 12, 2006, for a period of six months. Again, Mother agreed to submit to random drug tests; participate in substance abuse treatment; and allow announced and unannounced home visits by DCS staff and service providers.

On July 31, 2006, DCS filed a petition, alleging O.A. to be a child in need of services ("CHINS"). In support of the petition, DCS alleged the following:

> Since the date of the extended [IA], [Mother] had been inconsistent and lacked motivation in following through with goals set by she [sic] and DCS. . . . There have been four scheduled home visits missed by [Mother] between June 26, 2006 to July 10, 2006. Five drug screens have been requested by DCS and service providers with two of those five screen[s] coming back positive for marijuana in the urinalysis. [Mother] was supposed to start the GED program [the] week ending May 20, 2006, and to this date has yet to start. [Mother] is also currently attending IOP [intensive outpatient] classes through Samaritan Center to address her substance abuse issues. However, progress reports from Samaritan Center state that [Mother] is making minimal progress due to her lack of participation within the group setting.

(Ex. Vol. at 68). The petition recommended that O.A. remain in her parents' care as an in-home CHINS.

On November 6, 2006, the trial court entered a dispositional decree. Among other things, it ordered Father to keep DCS informed of his contact information and to report any changes immediately; cooperate with DCS staff in "keeping appointments and allowing home visits"; "cooperate and follow through with recommendations of services providers and keep all scheduled appointments"; "attend and participate in therapy on a regular basis to address issues of parenting, families, relationship, domestic violence,

substance abuse and anything else relevant to the emotional healthiness of the parent/child," with no more than three sessions missed; "participate in a program to sharpen parenting skills"; "refrain from any use of drugs/alcohol as well as illegal activities"; "obtain and maintain part-time or full-time employment"; "obtain single-family housing and maintain it for at leas[t] six months"; "submit to random and periodic drug screens as requested by [DCS] and service providers"; and "not allow known drug users in the home or allow anyone to be [sic] or possess drugs in the home." (Ex. Vol. at 78-81).

Between January 19 and May 21, 2007, DCS requested that Father submit to fifteen separate drug tests. Father, however, refused to submit to nine; thus, DCS considered them to be failed tests. Two hair tests tested positive for marijuana and methadone. On February 2, 2007, Father's urine test "came back positive for both marijuana and methadone." (Ex. Vol. at 83). Mother also continued to test positive for drugs. Accordingly, DCS removed O.A. from Mother and Father's home on February 13, 2007, and placed her in a licensed foster home.

DCS did not place O.A. with her maternal grandparents as originally planned because the grandparents had expressed concern about caring for another child; according to the maternal grandmother, they believed that taking care of the children provided "a crutch" for Mother and that "maybe, if [they] didn't have [O.A.], then [Mother] would work a little harder to get her daughter back." (Tr. 303). On February 26, 2007, the trial court authorized DCS to detain O.A.

On October 10, 2007, the State filed a petition to revoke Father's suspended sentence in a case arising from Father's February 10, 2004, conviction for possession of a controlled substance as a class D felony.[2] According to the State's petition, Father failed to comply with his substance abuse treatment; failed to complete his community service requirement; failed to report for a scheduled probation appointment; and failed to pay fees and costs. The trial court remanded Father to the Daviess County Security Center.

On October 23, 2007, the State charged Father with dealing in a schedule I, II, or III controlled substance, a class B felony.[3] The trial court again ordered that Father be held in the custody of the Daviess County Sheriff.

On October 29, 2007, DCS filed its petition for involuntary termination of Mother's and Father's parental rights as to O.A. On April 10, 2008, the trial court held an initial hearing on DCS's petition. The parents denied the allegations of the petition, and the trial court appointed a guardian ad litem ("GAL").

On February 28, 2008, Father filed a petition to modify the dispositional decree, seeking O.A's placement with his sister and brother-in-law, Danielle and Chad Hopwood. According to the Hopwoods' affidavit, filed with the petition, they completed foster parenting classes on February 28, 2008; however, they had yet to complete the remaining requirements. The trial court denied Father's petition on March 26, 2008.

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[2] Ind. Code § 25-48-4-7.

[3] I.C. § 35-48-4-2.

On or about July 4, 2008, a search of Father's cell revealed that he possessed contraband; namely, "hooch," which is alcohol made from fermented fruit or fruit juice. (Tr. 13).

The trial court commenced the final termination hearing on August 13, 2008, which it continued to October 14, 2008, and again to November 13, 2008. Mother voluntarily terminated her parental rights as to O.A. on August 13, 2008.

DCS presented evidence that it referred Father to several services, including home-based therapy through Ireland Home Based Services, LLC ("Ireland"). Kenneth Scheller, the therapist assigned to Father through Ireland, began meeting with Father on a weekly basis in January of 2007 in order to address substance abuse, "stress reduction," and "[r]elationship issues." (Tr. 24). Due to Father's work schedule, Scheller often met Father at his workplace. Scheller encouraged Father to attend a twelve-step program for his substance abuse, which he did "[o]ff and on." (Tr. 26). Father, however, continued to use alcohol and drugs "[o]ff and on." (Tr. 26).

Father attended the meetings with Scheller consistently "[f]or awhile" but then began to miss appointments in May of 2007. (Tr. 25). Despite his attempts, Scheller could not "get a hold of him anymore." (Tr. 25). Scheller's last meeting with Father occurred in May of 2007, three months after O.A.'s removal from Father and Mother's home.

In July of 2006, the Daviess County Probation Department referred Father to an "intensive outpatient treatment program" at the Samaritan Center to address what the Samaritan Center diagnosed as "[a]mphetamine [a]buse"; "[c]annabis [d]ependence"; and

[o]pioid [d]ependence." (Tr. 64; Vol. Ex. At 101). The program consisted of weekly group therapy. The Samaritan Center, however, terminated him from the program in February of 2007 because he "missed most appointments." (Ex. Vol. at 116).

After receiving another referral from DCS, Father reentered the Samaritan Center substance abuse program on or about March 14, 2007. The Samaritan Center diagnosed him with "[c]annabis [d]ependence"; "[a]mphetamine [a]buse"; and "[c]ocaine [a]buse[.]" (Ex. Vol. at 130). Treatment again included intensive outpatient therapy, consisting of group therapy. The Samaritan Center advised him that missing or cancelling sessions would result in his termination from the program.

After Father missed several appointments and sessions, the Samaritan Center sent him a letter on May 17, 2007, informing him that if he failed to contact the Samaritan Center and schedule further treatment, he would be terminated from the program. The Samaritan Center officially terminated Father from its program on or about May 30, 2007.

Samantha Sellers, a DCS family-case manager, testified that Father failed to provide DCS with his contact information; missed several visitations with O.A.; did not cooperate with his service providers by keeping his scheduled appointments; failed to attend and participate in therapy; did not participate in a parenting skills program; and failed several drug tests. She also testified that Father never attempted any contact with O.A. while he was incarcerated.

Sellers further testified that she believed the termination of Father's parental rights to be in O.A.'s best interests because he continued to abuse drugs, despite "a number of

opportunities to become clean," and he remained incarcerated, with a pending class B felony charge against him. (Tr. 73). She further testified that DCS's plan for O.A. is adoption. Lynne Ellis, O.A.'s court-appointed GAL, testified that she believed termination of Father's parental rights to be in O.A.'s best interests due his "lifestyle," including drug use and criminal activity. (Tr. 152).

O.A.'s foster mother testified that she and her husband have bonded with O.A. and would like to adopt her. Mother testified that she believed it to be in O.A.'s best interests to remain with her foster family. O.A.'s maternal grandmother also testified that she believed termination of both Mother's and Father's parental rights to be in O.A.'s best interests because "they've had ample time to get their lives together" and that O.A. "is settled, she is happy" with her foster family. (Tr. 318). She further testified that as the guardian of O.A.'s brothers, she would allow them to have contact with O.A. if O.A. were adopted.

Father testified that he has been attending a recovery program in jail and completed a parenting class. He also testified that he did not know when he would be released from jail. He remains in jail because he has been unable to post bond for his release. Despite having been disciplined for manufacturing "hooch" while in jail, Father testified that he "never had a drinking problem[.]" (Tr. 433).

On October 3, 2008, subsequent to the commencement of the final hearing, C. Douglas and Tamela Howard, Father's uncle and aunt, filed a petition for guardianship in the termination case. On October 9, 2008, DCS filed a motion to dismiss the Howards' petition, asserting that they had not adhered to the statutory requirements for filing a

petition for guardianship and that they lacked "standing to file any petitions or motions in the Termination case as they are not parties to the case." (App. 47). The trial court granted DCS's motion to dismiss on October 14, 2008, the second day of the final hearing.

On October 14, 2008, Father filed a motion to dismiss the petition to terminate his parental rights. He asserted that DCS "has not provided any meaningful plan which would allow [O.A.] to remain with relatives and insists that [O.A.] b[]e adopted by the current foster parent." (App. 45). The trial court heard arguments on Father's motion to dismiss the same day.

On December 29, 2008, the trial court terminated Father's parental rights. In its order, the trial court made the following findings:

> 3. That it has been established by clear and convincing evidence that the allegations of the termination petition are true, in that there is a reasonable probability that the conditions that resulted in the child's removal will not be remedied.
>
> . . . .
>
> [Father] has been continually incarcerated in the Daviess County Jail for a significant period of time. Because of his incarceration, he has been unable to participate in services. At the hearing on November 13, 2008, [Father] testified that he has been incarcerated for thirteen (13) months and he is not sure how long he will continue to be incarcerated. [Father] advised that he has pending against him a Petition to Revoke his probation on a 2004 charge and that he is also being held on a new charge of Dealing in Schedule II Controlled Substance.
>
> Further, the evidence in the hearings indicated that even prior to his incarceration, [Father] failed to comply with the terms of the Court's dispositional decree. [Father] was [o]rdered to attend therapy to address family issues, but failed to comply with this counseling requirement. He failed to comply with his drug treatment obligations. [Father] failed to complete his obligation to attend parenting classes. [Father] also refused to

> submit to the required random drug screens. [Father] failed to visit with [O.A.] on a regular basis as [o]rdered by the Court.
>
> 4. That it has been established by clear and convincing evidence that the allegations of the termination petition are true, in that the continuation of the parent-child relationship poses a threat to the well-being of the child. Every child wants and needs a stable and nurturing relationship with its parents. In this case, . . . [Father's] long-standing drug issues, pattern of criminal involvement, his long period of incarceration and the present uncertainty of [Father's] pending criminal charges have made a stable and nurturing relationship impossible. . . . [N]either parent has been able or willing since the removal of [O.A.] to do the things necessary to bring about unification with the child. This puts [O.A.] at risk.
>
> 5. That it has been established by clear and convincing that the termination of the parent-child relationship is in the best interest of the child, [O.A.] The parents have demonstrated an inability to regularly and consistently meet the needs of the child.
>
> 6. That it has been established by clear and convincing evidence that [DCS] has a satisfactory plan for the care and treatment of the child which is the adoption of the child by the foster parent . . . .

(App. 17-19). The trial court also found that Father had "failed to carry his burden concerning his Motion to Dismiss filed October 14, 2008." (App. 19). Accordingly, the trial court denied Father's motion to dismiss.

Additional facts will be provided as necessary.

DECISION

1. Clear and Convincing Evidence

Father asserts that DCS failed to present clear and convincing evidence to support the termination of his parental rights. Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to

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

When DCS seeks to terminate parental rights, it must plead and prove in relevant part that:

> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 153 n.5 (Ind. 2005). Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the children. *See* I.C. § 31-35-2-4(b)(2)(B); *A.N.J.*, 690 N.E.2d at 721 n.2.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *A.N.J.*, 690 N.E.2d at 720. We consider only the evidence most favorable to the judgment. *Id*. 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. *L.S.*, 717 N.E.2d at 208.

a. *Conditions remedied*

Father asserts that DCS failed to prove by clear and convincing evidence that there is a reasonable probability that his use of illegal drugs will not be remedied. He admits that he "failed to do what DCS demanded of [him], i.e. attend visitations, take and pass drug screens, etc." Father's Br. at 5. Nonetheless, he argues that he is "fighting to control his addictions"; "found religion" in jail; and "has participated in a twelve-step program" while incarcerated. *Id.*

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child's

physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS initiated a CHINS proceeding due to drug use by Mother and Father, and the trial court ordered Father to refrain from using drugs and alcohol. The evidence presented shows that Father has a long history of drug abuse, which resulted not only in O.A.'s removal but also arrests and probation revocations.

Despite being offered services, Father failed several drug tests and failed to complete treatment for his substance abuse. He also failed to meet with his therapist and to attend scheduled visitation with O.A. His substance abuse eventually led to his current incarceration, which is for an unknown period of time. Only one month prior to the termination hearing, he was discovered with contraband in his cell. Father presented no evidence to show that he has successfully treated his drug abuse. Given Father's pattern of conduct, we find that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in O.A.'s removal from Father's home will not be remedied.

b. *Best interests and satisfactory plan*

Father also asserts that termination of his parental rights are not in O.A.'s best interests and that DCS has failed to show that there is a satisfactory plan for the placement of the O.A., where he "ha[s] members of his family who [a]re ready[,] willing and able to take [O.A.] into their homes . . . ." Father's Br. at 8. Father contends that O.A. should be placed with relatives; namely, the Hopwoods; the Howards; or O.A.'s paternal grandparents.

For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. "[I]n determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children." *Id.* The testimony of a child's guardian ad litem and caseworker regarding the child's need for permanency supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203.

Before the trial court may terminate the parent-child relationship, however, it must find that there is a satisfactory plan for the care and treatment of the child. *In re S.L.H.S.*, 855 N.E.2d 603, 618 (Ind. Ct. App. 2008). "This plan 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." *Id.* Generally, adoption is a satisfactory plan. *See id.*

According to the record, the Hopwoods met with Sellers in August of 2007 and expressed their interest in having O.A. placed in their home. Sellers advised them that they would need to meet certain requirements before the DCS could place O.A. in their home. They, however, failed to complete the requirements because the information given to them "was simply overwhelming." (Ex. Vol. at 93). The Hopwoods last saw O.A. "[r]ight before she was taken," in February of 2007. (Tr. 378). They did not request a visit with O.A. until "March of [2008] . . . ." (Tr. 379).

During the termination hearing, Mr. Hopwood testified that he had "no excuse" for not contacting DCS prior to March of 2008. (Tr. 415). Mrs. Hopwood testified that she did not initially follow up on her first meeting with DCS because she "just kind of

freaked out" and failed to satisfy DCS's requirements for O.A.'s placement in their home because she "don't [sic] get in a hurry[.]" (Tr. 371; 375).

The Howards filed for guardianship of O.A. on October 3, 2008. In their petition, they asserted that O.A. and Father had resided with them from June of 2006 to December of 2006 while Father was on house arrest. They had little contact with O.A. during 2007 and when allegedly approached by Mother, declined "to take on the responsibility of full guardianship." (App. 50).

During the termination hearing, Mr. Howard testified that Father, O.A., and O.A.'s brothers lived with the Howards from June of 2006 to December of 2006, while Father was on house arrest. Mother also lived with the Howards for the first three months, until she "went to jail." (Tr. 245). The Howards were aware that DCS was involved with O.A.'s parents but "never pried[.]" (Tr. 258).

The Howards learned of O.A.'s removal during "late summer of 2007," when Mother asked whether they would take O.A. (Tr. 249). After they offered to foster O.A. but not take guardianship, they "never heard from [Mother] again[.]" (Tr. 250). The Howards never contacted Mother or DCS regarding O.A. because they were "really upset with [Father] at the time," and believed O.A.'s maternal grandmother "was taking the child[.]" (Tr. 252). They "[n]ever saw [O.A]." (Tr. 252).

Mr. Howard further testified that he and his wife wanted guardianship of O.A. because "she should be able to grow up seeing her . . . brothers . . . ." (Tr. 254). He testified that he and his wife finally initiated a guardianship when they "started hearing these rumors that, no, it's not just foster care, this lady wants to adopt her off . . . ." (Tr.

259). According to Mr. Howard, they would be willing to take O.A. for as long as it would take Father to "get a home of his own where she could move back into, and that all worked out[.]" (Tr. 264). However, he acknowledged that their main motivation for seeking guardianship is so that O.A. and her siblings "could grow up as brother and sister[.]" (Tr. 264-65). Mr. Howard acknowledged that O.A.'s brothers reside with their maternal grandmother, but he asserted that they "lived in [his] house fifty percent of the time" during summer. (Tr. 265).

O.A.'s paternal grandmother, C.A., testified that she "basically took care of [O.A.]" after she was born and that she "want[s] that baby back in [her] family." (Tr. 387; 388) She further testified that she did not see or visit O.A. after Father went to live with the Howards in June of 2006. According to C.A., it was "out of sight, out of mind, and that's what [she] done [sic]." (Tr. 387).

She also testified that she learned of O.A.'s removal approximately two weeks after it occurred, but she never attempted to contact DCS regarding O.A. According to C.A., it was DCS's "job, it wasn't [her] job" to make contact. (Tr. 393-94). However, Father had informed her that termination proceedings were pending.

O.A.'s paternal grandfather, D.A., testified that Father moved from his parents' household into the Howards' after Father's parents obtained a restraining order against him following an altercation. He further testified that he first contacted DCS regarding O.A. in August of 2008. He opined that "somebody in th[e] family should have [O.A]." (Tr. 403).

Melinda Berry, the director of the Daviess and Martin County Department of Child Services, testified that in determining whether there are relatives with whom a child can be placed, DCS relies on information from the parents. Furthermore, due to confidentiality concerns, DCS requires parents to "sign a release of information . . . that" allows DCS to contact and share information with family members. (Tr. 339). To her knowledge, Mother and Father raised only the maternal grandmother as a possible placement.

Ellis, O.A.'s GAL, testified that she had met with O.A. at her foster home. She testified that O.A. "appear[ed] to be very well adapted . . . ." (Tr. 151). She further testified that she believed termination of Father's parental rights to be in O.A.'s best interests.

Sellers, the family's case manager, testified that O.A. is "very settled" and "seems happy" in her foster home. (Tr. 72). She also testified that she believed it to be in O.A.'s best interests to terminate Father's parental rights and that DCS's plan for permanency is adoptive placement. She, however, could not say "one way or not" whether O.A.'s foster parents or relatives would be considered as adoptive parents because DCS would "have to look at the best interests of the child." (Tr. 103; 113). She further testified that DCS opposed the Hopwoods' petition for guardianship "due to the lack of follow through and the time frame that the relative's [sic] waited to do anything." (Tr. 108).

Here, the record shows that O.A. was removed from her home in February of 2007 and placed with a foster family, where she remains. DCS filed the petition to terminate the parental rights in October of 2007. The Hopwoods admitted that after an initial

meeting with DCS in August of 2007, they did not take the necessary steps to have O.A. placed with them. They further admitted that they had not seen O.A. in over a year. Mr. Howard testified that he and his wife last saw O.A. in December of 2006, more than one year before they filed for guardianship. O.A.'s paternal grandparents testified that they had had no contact with O.A. since June of 2006; furthermore, they did not attempt to facilitate contact with O.A. until August 8, 2008, well after DCS removed O.A. Thus, O.A. has had no contact with any of Father's relatives in over a year; and it was not until at least one year after her removal from her parent's care—and only after DCS filed the petition to terminate parental rights—that any of the relatives attempted to gain guardianship over O.A. Father's relatives place the blame for having no contact with O.A. on DCS. However, it is clear that Father did not encourage their contact with O.A., and the relatives did little to facilitate contact.

As to Father, he has made no attempt to contact O.A., either by sending letters or cards, since his incarceration in October 2007. Also, his release date is unknown, as a class B felony charge is pending against him. Given the evidence, we find no error in concluding that termination of Father's rights would be in O.A.'s best interests.

Finally, DCS presented evidence that O.A. has bonded with, and is thriving in the care of, her foster family. DCS's permanency plan for O.A. is adoption, and O.A.'s foster family has expressed interest in adopting her. DCS staff testified that the foster family's desire to adopt O.A. does not necessarily preclude her adoption by relatives, and they testified that a final decision regarding adoption has not been made. A permanency plan "does not need to be detailed as long as it offers a general sense of the direction in

which the child[] will be going after termination." *In re A.K. and An.K.*, 755 N.E.2d 1090, 1098 (Ind. Ct. App. 2001). The statute only requires that DCS present a satisfactory plan for the care and treatment of a child. *Id.* Again, adoption is a satisfactory plan. *See id.* Therefore, DCS has proved that there is a satisfactory plan in place.

Based on the totality of the evidence, we find that there is sufficient evidence that the conditions that resulted in O.A.'s removal will not be remedied; termination of Father's parental rights is in the best interests of O.A.; and that DCS has a satisfactory plan. Accordingly, the elements necessary to sustain the termination of Father's parental relationship with O.A. were established by clear and convincing evidence.

2. Motion to Dismiss

Father asserts that the trial court erred in denying his motion to dismiss the petition to terminate parental rights pursuant to Indiana Code section 31-35-2-4.5.[4] We disagree.

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[4] Indiana Code section 31-35-2-4.5(a) provides

> This section applies if:
> (1) a court has made a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification with respect to a child in need of services are not required; or
> (2) a child in need of services:
> (A) has been placed in:
> (i) a foster family home, child caring institution, or group home licensed under IC 31-27; or
> (ii) the home of a person related (as defined in IC 31-9-2-106.5) to the child;
> as directed by a court in a child in need of services proceeding under IC 31-34; and
> (B) has been removed from a parent and has been under the supervision of the department for not less than fifteen (15) months of the most recent twenty-two (22) months, excluding any period not exceeding sixty (60) days before the court has entered a finding and judgment under IC 31-34 that the child is a child in need of services.

Section 4.5(d) provides:

> A party shall file a motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply:
> (1) That the current case plan prepared by or under the supervision of the department under IC 31-34-15 has documented a compelling reason, based on facts and

> Section 4.5 applies when a petition to terminate has been filed because the trial court has determined that "reasonable efforts for family preservation or reunification with respect to a child in need of services are not required," or when a child in need of services has been placed in the home of a related individual, a licensed foster family home, child caring institution, or group home, and when the child has been so placed for not less than fifteen of the most recent twenty-two months.

Everhart v. Scott County Office of Family and Children, 779 N.E.2d 1225, 1229 (Ind. Ct. App. 2002), *trans. denied*. Section 4.5 is inapplicable here as the petition to terminate was based, in part, on the grounds that O.A. had been removed from her parents for at least six months under a dispositional decree. *See id.* (finding section 4.5 inapplicable where a petition was filed because the children had been removed from their parents for at least six months pursuant to a dispositional decree).

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circumstances stated in the petition or motion, for concluding that filing, or proceeding to a final determination of, a petition to terminate the parent-child relationship is not in the best interests of the child. A compelling reason may include the fact that the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, or uncle or a person related . . . to the child who is caring for the child as a legal guardian.
(2) That:
(A) IC 31-34-21-5.6 is not applicable to the child;
(B) the department has not provided family services to the child, parent, or family of the child in accordance with a currently effective case plan prepared under IC 31-34-15 or a permanency plan or dispositional decree approved under IC 31-34, for the purpose of permitting and facilitating safe return of the child to the child's home; and
(C) the period for completion of the program of family services, as specified in the current case plan, permanency plan, or decree, has not expired.
(3) That:
(A) IC 31-34-21-5.6 is not applicable to the child;
(B) the department has not provided family services to the child, parent, or family of the child, in accordance with applicable provisions of a currently effective case plan prepared under IC 31-34-15, or a permanency plan or dispositional decree approved under IC 31-34; and
(C) the services that the department has not provided are substantial and material in relation to implementation of a plan to permit safe return of the child to the child's home.
The motion to dismiss shall specify which of the allegations described in subdivisions (1) through (3) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through (3) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship.

As to Father's assertion that the motion to dismiss was required due to a compelling reason, such as "the fact that the child is being cared for by," *see* I.C. § 31-35-2-4.5(d)(1), or as Father contends, could be cared for by, a relative, "the statute permits, but does not require, DCS to conclude that the placement of the child[] with a relative is a compelling reason to dismiss the petition." *In re Kay.L.*, 867 N.E.2d 236, 241 (Ind. Ct. App. 2007) (emphasis added). We therefore find no error in denying Father's motion to dismiss the petition to terminate the parent-child relationship.

3. Voluntary Termination of Parental Rights

Father also asserts that the trial court erred in allowing Mother to terminate her parental rights. He contends that "it stands to reason that if it was error for the court to terminate [his] parental rights, it was also error for the trial judge to have accepted and approved [Mother]'s voluntary termination . . . ." Father's Br. at 17-18.

Father cites to no authority to support his position. Thus, this argument is waived. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) ("Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."), *trans. denied*. Waiver notwithstanding, we find no error in terminating Father's parental rights. Hence, we cannot say that the trial court erred in allowing Mother to terminate her parental rights.

Affirmed.

ROBB, J., and MATHIAS, J., concur.