



**In the
Missouri Court of Appeals
Western District**

**IN THE INTEREST OF: K.L., T.L., T.L.,
K.L.,**

Respondents;

JUVENILE OFFICER,

Respondent,

v.

T.L., (FATHER),

Appellant,

K.G., (MOTHER),

Appellant.

**WD81395
Consol. with: WD81396**

OPINION FILED:

OCTOBER 9, 2018

**Appeal from the Circuit Court of Jackson County, Missouri
The Honorable David M Byrn, Judge**

**Before Division Three: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge,
Alok Ahuja, Judge**

T.L., Father, and K.G, Mother, appeal the circuit court's judgment terminating their parental rights to four biological children, K.L., T.L., T.L, and K.L. Both parents separately assert four points on appeal. They contend that the circuit court 1) erred in terminating parental rights pursuant to Section 211.447.5(2)¹ because there was no clear, cogent, and convincing evidence supporting the court's findings of neglect, 2) erred in terminating parental rights pursuant to

¹ All statutory references are to the Revised Statutes of Missouri as supplemented through 2013 unless otherwise noted.

Section 211.447.5(3) because that there was no clear, cogent, and convincing evidence supporting the court's finding of persistent harmful conditions with little likelihood of a timely remedy, 3) erred in terminating parental rights pursuant to Section 211.447.5(6) because there was no clear, cogent, and convincing evidence that they are unfit to be a party to the parent child relationship, and 4) erred in finding termination of parental rights to be in the best interest of the children pursuant to Section 211.447.6. We affirm.

Procedural and Factual Background

On December 4, 2017, the circuit court terminated the parental rights of Father and Mother to K.L. (born October 10, 2005), T.L. (born May 17, 2007), T.L. (born October 21, 2008), and K.L. (born February 6, 2011).² The children were ages eleven, nine, eight, and six at the time of the termination hearing. Evidence at trial, in the light most favorable to the judgment, was as follows:

Prior to T.L.-08's and K.L.-11's births, K.L.-05 and T.L.-07 were found to be in need of the care and supervision of the court. When T.L.-07 was born, Mother tested positive for exposure to PCP and admitted using PCP three days prior to T.L.-07's birth and at least twice during her pregnancy. Sibling K.L.-05 was nineteen months old at the time. Father was also using illegal substances, including PCP and marijuana, and tested positive for PCP and THC just after T.L.-07's birth. K.L.-05 and T.L.-07 initially remained in parental care while their parents participated in drug treatment. In October of 2007, however, the children were placed in foster care due to parental noncompliance with drug treatment and continued possession and use of illegal substances. Father tested positive for marijuana on September 4, 2007, and on October 6, 2007,

² Because K.L., K.L., and Mother share identical initials, and T.L., T.L., and Father share identical initials, when referenced individually the children will be identified by their initials and the last two digits of their birth year. The parents will be identified as Father and Mother.

police found 2.7 grams of what police believed to be crack cocaine in Father's and Mother's car. Father told police it was Mother's "dope." The parents were provided services to address concerns and facilitate reunification with their children.

On July 22, 2008, after approximately nine months in foster care, the children were returned to Mother. On October 21, 2008, TL-08 was born. The court released jurisdiction and supervision of the family on November 14, 2008. On August 18, 2009, Father pleaded guilty to Felony Possession of a Controlled Substance. On April 21, 2010, Father pleaded guilty to misdemeanor stealing and two counts of third degree assault.

On November 9, 2011, and while pregnant with K.L.-11, Mother tested positive for PCP at a prenatal visit. Mother also tested positive for PCP on February 6, 2011, when K.L.-11 was born. Mother, nevertheless, denied using PCP during her pregnancy. She admitted, however, to using marijuana one time per week throughout her pregnancy and until three weeks prior to K.L.-11's birth. The Juvenile Officer and Children's Services again became involved with the family and the court took K.L.-05, T.L.-07, T.L.-08, and K.L.-11 into protective custody. The court determined that the children were in need of care and treatment, assumed jurisdiction, and placed all children in the legal custody of the Children's Division. The two older children, ages four and five, were allowed to remain in Mother's care. The two younger children, newborn and age two, were placed in foster care.³ Father and Mother were provided services to facilitate the return of the two younger children to their care.

Approximately four months later, on June 7, 2011, Mother was arrested. Mother failed to notify the Children's Division of her arrest and failed to make appropriate arrangements for K.L.-

³ All children were placed in the legal custody of the Department of Social Services, Children's Division.

05 and T.L.-07, the children remaining in her care. Father was using illegal substances at that time, including PCP and marijuana. Just prior to Mother's arrest, Father tested positive for PCP and THC by urinalysis. The two older children, K.L.-05 and T.L.-07, were then placed in foster care. Father and Mother were provided services to facilitate the return of the children to their care. Approximately six months later (January 5, 2012), all children were returned to Mother's care. The court released jurisdiction and supervision over the family on April 2, 2013.

On August 24, 2015, Mother was hospitalized due to an altered mental state stemming from drug use; she tested positive for PCP and marijuana. She admitted to smoking marijuana that may have contained PCP. On August 31, 2015, Father tested positive for PCP and marijuana. The children were all placed in foster care. The parents were again provided services to facilitate return of the children to parental care. Throughout Children's Services involvement with the family, parents were provided intensive in home services, psychological evaluations, individual therapy, parent aides, random urinalysis and hair tests, drug treatment, paternity testing, parenting classes, and psychiatric treatment.

On September 30, 2016, the children remained in foster care and the Juvenile Officer filed petitions to terminate the parental rights of T.L. and K.G. to K.L.-05, T.L.-07, T.L.-08, and K.L.-11.⁴ The Juvenile Officer alleged that termination of parental rights was in the children's best interest and warranted based on the following: 1) Pursuant to Section 211.447.5(2), the children had been abused and neglected and both parents had chemical dependencies preventing them from consistently providing the children with necessary care, custody, and control. Further, the parents

⁴ In February of 2017, another child was born to Mother drug exposed to PCP and marijuana at birth. This child is not part of this appeal.

repeatedly and continuously failed, although physically and financially able, to provide the children with adequate food, clothing, shelter, education, or other care necessary to meet the children's physical, mental, or emotional health and development; 2) Pursuant to Section 211.447.5(3), the children had been under the jurisdiction of the juvenile court for a period of one year and the conditions which led to the assumption of jurisdiction still persisted, with conditions of a potentially harmful nature continuing to exist, and; 3) Pursuant to Section 211.447.5(6), the parents were unfit to be a party to the parent and child relationship because of conditions relating to the parent/child relationship rendering the parents unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the children.

Trial was held September 18, 2017. The circuit court entered judgment on December 4, 2017, terminating T.L.'s and K.G.'s parental rights on all grounds alleged by the Juvenile Officer. This appeal follows.

Standard of Review

Termination of parental rights is permitted when a statutory ground for termination is supported by clear, cogent, and convincing evidence and when termination is determined to be in the best interests of the child by a preponderance of the evidence. *In re A.M.S.*, 272 S.W.3d 305, 308 (Mo. App. 2008). "When the trial court finds multiple statutory grounds for termination of parental rights, in order to affirm the judgment this Court need only find that one of the statutory bases was proven and that termination was in the best interests of the child." *In Re T.R.W.*, 317 S.W.3d 167, 170 (Mo. App. 2010). In our review, we "defer to the [circuit] court's ability to judge the credibility of witnesses and will affirm the judgment unless there is no substantial evidence to support it, it is contrary to the evidence, or it erroneously declares or applies the law." *Interest of K.A.W.*, 133 S.W.3d 1, 11 (Mo. banc 2004). We consider the evidence in the light most favorable

to the circuit court's ruling and ignore any evidence to the contrary. *A.M.S.*, 272 S.W.3d at 307 (Mo. App. 2008); *In re B.J.K.*, 197 S.W.3d 237, 247 (Mo. App. 2006).

Point II – Termination of Parental Rights Pursuant to Section 211.447.5(3)

The circuit court terminated parental rights pursuant to several grounds including grounds specified under Sections 211.447.5(2), 211.447.5(3), and 211.447.5(6), and found termination to be in the children's best interest pursuant to Section 211.447.6. Father and Mother challenge the court's Judgment on all grounds. As proof of only one statutory ground is required to affirm the court's Judgment when termination is in the child's best interests, we address the court's Judgment as to Section 211.447.5(3) and Section 211.447.6, corresponding with Father's and Mother's second and fourth points on appeal.⁵

Section 211.447.5(3) allows the court to terminate parental rights to a child when:

The child has been under the jurisdiction of the juvenile court for a period of one year, and the court finds that the conditions which led to the assumption of jurisdiction still persist, or conditions of a potentially harmful nature continue to exist, that there is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future, or the continuation of the parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent home.

In determining whether to terminate parental rights under this subdivision, the court is required to consider and make findings on the following factors: 1) compliance with terms of a social service program entered into with the Children's Division, 2) the success or failure of the efforts of the Juvenile Officer, Children's Division, or other agency to aid the parent on a continuing basis in adjusting his or her circumstances or conduct to provide a proper home for the child, 3) a mental condition rendering the parent unable to knowingly provide the child the necessary care, custody

⁵ Our choice of statutory ground is no reflection on the merits of the other grounds found by the court to warrant termination of parental rights.

and control, and 4) a chemical dependency which prevents the parent from consistently providing the necessary care, custody and control over the child and which cannot be treated so as to enable the parent to consistently provide such care, custody and control. § 211.447.5(3)(a)(b)(c)(d). These factors “are not separate grounds for termination by themselves, but rather categories of evidence, that the court may consider along with all other relevant evidence in determining whether grounds for termination exist under § 211.447.5 (3).” *In re S.Y.B.G.*, 443 S.W.3d 56, 60 (Mo. App. 2014). Although the court should consider and make findings on all factors, proof of just one factor is sufficient to support termination of parental rights. *Id.*

Father’s Claims

Father contends that the circuit court erred in terminating his parental rights pursuant to Section 211.447.5(3) because there was not clear, cogent, and convincing evidence to support the court’s conclusion that harmful conditions persist with little likelihood the conditions will be timely remedied to allow return of the children in the near future. He argues that the court made no specific finding of a dangerous condition and there is insufficient evidence to show that Father is not making progress on the terms of social service plans, that Father is not adjusting his circumstances to provide a proper home for the children, and that a chemical dependency renders Father unable to provide care. We find no error.

First, Father argues that the court made a “dispositive legal error” by failing “to make a specific articulated finding of the presence of a dangerous condition and, instead, simply recited the statutory language.” We disagree. We stated in *In Interest of H.H.*, 525 S.W.3d 551, 558 (Mo. App. 2017):

It was not error for the court to recite statutory language in its judgment, as [Father] suggests. It would have only been error if the court had failed to support that statutory language with clear and convincing evidence from the record. Here,

the court supported its statutory findings. To support its findings that the conditions which led to the assumption of jurisdiction still persist and that conditions of a potentially harmful nature continue to exist, the court used the factors set forth in 211.447.5(3)(a)(b)(c)(d) as an organizational framework in examining the evidence and reaching the determination that [Father] failed to remedy the conditions leading to the assumption of jurisdiction, and that that failure was likely to continue.

Here, as in *Interest of H.H.*, the circuit court recited the statutory language and supported its findings through examination of the evidence under the factors set forth in Section 211.447.5(3).

Second, Father argues that many of the circuit court's findings are legally improper because they were outside the scope of the "ambiguous pleading by the Juvenile Officer" which failed to comply with Missouri Supreme Court Rules 125.02, 113.01, and Section 211.452. Yet, Father never challenged the pleadings of the Juvenile Officer by filing a motion for more definite statement under Rule 55.27(d). By failing to make such a motion, parties are deemed, pursuant to Rule 55.27(f), to have waived any objection as to the particularity of the averments. *Clark v. Olson*, 726 S.W.2d 718, 719 (Mo. banc 1987). Likewise, any constitutional claims alleging due process violations for inadequate notice are waived if not made to the circuit court. *State v. Oates*, 540 S.W.3d 858, 863 (Mo. banc 2018).

Regardless, "[w]e have previously held the petition to be sufficient if it tracks the language of the statute and gives the parent adequate notice of the allegations." *In re D.D.C.*, 351 S.W.3d 722, 737 (Mo. App. 2011). Here, the Juvenile Officer's petitions tracked the language of Section 211.447.5(3) by alleging that the children had been under the jurisdiction of the court for a period of one year, and the conditions leading to the assumption of jurisdiction continued to persist, with conditions of a potentially harmful nature continuing to exist. The petitions alleged there was little likelihood those conditions would be remedied at an early date so the children could be returned

to Father in the near future. Further, they alleged that continuation of the parent-child relationship greatly diminished the children's prospects for early integration into a stable and permanent home.

Aside from tracking the statutory language, the petitions also alleged that Father had not meaningfully addressed his substance abuse issues since the children were placed in foster care. The petitions alleged that Father's participation in reunification services had been inconsistent and although Father had participated in substance abuse treatment, he continued to test positive for marijuana and/or phencyclidine on multiple occasions. The petitions alleged that Father had, for the previous nine years, failed or refused to remove illicit substances from his life and this refusal affected his ability to appropriately care for his children; the children were placed in the care of the Children's Division on multiple occasions because of Father's drug use.

We find no merit in Father's claim that, because the Juvenile Officer did not specify *what* reunification services Father did not consistently participate in or *how* Father did not consistently participate in the services, the circuit court's findings were outside the scope of the pleadings and, therefore, "legally improper." All findings made by the court were within the scope of the Juvenile Officer's pleadings.

Third, Father contends that the court never described in its Judgment how the conditions leading to the assumption of jurisdiction related to the conditions existing at the time of trial. We disagree. When the court assumed jurisdiction over the children on November 9, 2015, Father stipulated that the following was true:

The children ... are without proper care, custody and support necessary for their well-being and are subject to the jurisdiction of this Court pursuant to Section 211.031.1 RSMo in that the father has a pattern of substance abuse. Specifically, the children [KL and TL] have been under the jurisdiction of this Court on two occasions due, in part, to the father's illegal drug use in case numbers 0716-JU000644 and 0716-JU000643, and then again in case numbers 1116-JU000151 and 1116-JU000152. The children, [TL and KL], were previously under the

jurisdiction of this Court in case numbers 1116-JU000153 and 1116-JU000154 due, in part, to the father's illegal drug use. Then, on or about August 31, 2015, the father again tested positive for PCP and marijuana by urinalysis. The children are at risk absent the intervention of this Court.

As the foregoing shows, the circuit court assumed jurisdiction of the children because of Father's substance abuse. Hence, the conditions leading to the assumption of jurisdiction, as relevant to Father, involved Father's inability to abstain from drug use which impacted the children and resulted in the children being placed in foster care. In describing how the conditions leading to the assumption of jurisdiction related to the conditions existing at the time of trial, and how the conditions leading to the assumption of jurisdiction continued to persist, the court found:

Father has failed to make progress in complying with the terms of the social service plan entered into with the Children's Division, such that he is unable to provide for the children's emotional and physical needs. The Court finds that Father has failed to consistently engage, participate and/or progress in services including, but not limited to, individual therapy, Parent Aide services, substance abuse treatment, random urinalysis and hair testing, and a psychological evaluation. Credible evidence presented indicated that although Father was ordered to participate in individual therapy, he did not participate consistently. The Court notes that at the time of trial, the Father was no longer engaged in therapy. The Court additionally finds that Father has failed and refused to complete a substance abuse program throughout the duration of the most recent underlying abuse and neglect action despite being court-ordered to do so. Furthermore, the Court finds that although Father has been court-ordered to participate in random urinalysis testing and hair testing, his compliance with that order was inconsistent such that his last testing occurred in June 2017. In addition, credible testimony established that Father attempted to have the urine collector provide a sample for him on at least three occasions. The Court finds this testimony to be credible and Father's behavior to be deceptive to this Court, further evidencing his inability to change his behavior so that he can safely parent the children. The Court finds that although Father was provided supervised visitation, he stopped participating in that service in June 2017 and was no longer engaged in visits with his children at the time of trial. The Court notes that there has been no improvement in Father's parenting skills due to his lack of consistent visitation with the children. The Court finds that there is little likelihood that these conditions can be remedied so as to allow for reunification or re-establishment of the parent-child relationship. ...

There was credible evidence presented that Father [] has a chemical addiction which prevents him from consistently providing the necessary care,

custody and control of the children and which cannot be treated so as to enable [Father] to consistently provide such care, custody and control over the children. As previously stated, throughout the children's most recent placement in alternative care, the father has tested positive for marijuana and/or phencyclidine on multiple occasions and he has failed or refused to participate in and successfully complete substance abuse treatment. Father's inability to recognize his chemical dependency issues is demonstrative of his continuous failure to address the effect his drug use has on his ability to appropriately parent the children.

We find no support in the record for Father's contention that the court never described in its Judgment how the conditions leading to the assumption of jurisdiction related to the conditions existing at the time of trial.

Finally, Father argues that the court's findings were not supported by clear, cogent and convincing evidence. He contends that, although "not in total compliance with the Written Service Agreement, [Father] was making progress towards compliance" and his participation was delayed due to a shoulder surgery. Father points to his own trial testimony, that he had stopped using illegal substances and stopped drug testing in June 2017 due to surgery, to support his contention that the circuit court completely discounted his progress in addressing his substance abuse issues. Father argues that the court overemphasized Father's attempts to have the urine collector provide a urine sample for him and downplayed Father's parenting ability. He contends that the court ignored Father's testimony that he could not complete visits with the children after his surgery due to restrictions with the use of his arm. He argues that, although his housing changed, there was no evidence that his housing was inappropriate or unstable. He states that at the time his parental rights were terminated, he did not have a chemical dependency that impaired his ability to parent the children.

In making these claims, Father does not dispute that the evidence, viewed in the light most favorable to the judgment, supports the court's ultimate conclusions; Father essentially argues that

the court improperly weighed the evidence and asks us to reweigh it. It is the trial court's province to weigh the evidence, not ours. *J.A.R. v. D.G.R.*, 426 S.W.3d 624, 627 (Mo. banc 2014). We are not at liberty to reweigh the evidence. *Id.* “[C]ircuit courts are better positioned to determine witness credibility and weigh evidence in the context of the whole record than an appellate court.” *Id.* at 626. Conflicting evidence is reviewed in the light most favorable to the trial court's judgment. *Id.* “When the evidence poses two reasonable but different inferences, this Court is obligated to defer to the trial court's assessment of the evidence.” *Id.* (internal quotation marks and citation omitted). Our Missouri Supreme Court “laid to rest any argument that the ‘clear, cogent, and convincing’ burden of proof requires this Court to consider any contrary evidence when reviewing whether the judgment is supported by substantial evidence.” *Id.* at 626 n.4.

The circuit court's findings are supported by the record. The evidence, in the light most favorable to the Judgment, is that Father has a substance abuse problem that has disrupted the lives of his children for nine years. He has not rectified this impediment to reunification despite being provided services. Father's inability to timely rectify these conditions has caused the children instability; it has also harmed their emotional well-being. The children's therapist testified that the children suffer from post-traumatic stress disorder resulting, in part, from Father's drug use and the domestic violence witnessed by Father toward Mother in Father's home. Father, nevertheless, denies responsibility for the children's placement in foster care. The evidence supports the court's conclusion that because Father has not addressed his substance abuse issues, the children would be at risk of further harm if returned to his care. At the time of trial, Father was not residing in a home that could accommodate his children and had provided minimal support to his children while they resided in foster care.

We find clear, cogent, and convincing evidence supporting the circuit court's judgment under Section 211.447.5(3) that harmful conditions attributable to Father persist, with little likelihood the conditions will be timely remedied to allow reunification in the near future.

Father's second point on appeal is denied.

Mother's Claims

Like Father, Mother claims that there was no clear, cogent, and convincing evidence supporting termination of her parental rights pursuant to Section 211.447.5(3). Mother argues that the court did not adequately consider the entire record of evidence regarding her efforts to comply with the social service plan and to provide a proper home for the children, and failed to consider her testimony regarding treatment for her chemical dependency.

As relevant to Mother, the court found that the children had been under the jurisdiction of the court for over one year, with conditions leading to the assumption of jurisdiction still persisting and conditions of a potentially harmful nature continuing to exist. The court found little likelihood that the issues would be timely remedied so the children could be returned to Mother in the near future. The court found that continuation of the parent-child relationship greatly diminished the children's prospects for early integration into a stable and permanent home.

The court additionally found:

The Court finds, based on the credible evidence, that Mother has failed to make progress in complying with the terms of the social service plan entered into with the Children's Division, such that she is unable to provide for the children's emotional and physical needs. Since November 2015, [Mother] has minimally complied with court orders and the reunification plan established through the Children's Division. Evidence presented establishes that since September 2015, Mother has sporadically participated in services and her whereabouts have been unknown for prolonged periods of time throughout the duration of the underlying action. The court finds that Mother has failed to consistently engage, participate and/or progress in ordered services to address her extensive chemical dependency issues, her lack of safe and stable housing, and her inability to take responsibility

for why the children were removed from her care. Additionally, Mother was ordered to participate in random urinalysis testing and credible evidence presented shows that she was inconsistent in her participation and repeatedly tested positive for multiple illegal substances. The Court finds that there is little likelihood that these conditions can be remedied so as to allow reunification or re-establishment of the parent-child relationship.

Based upon credible evidence presented, the Court finds that Mother has been offered numerous services to facilitate reunification with her children, including but not limited to parent aide services, individual therapy, random urinalysis and hair testing, substance abuse treatment, and a psychological evaluation. However, despite being provided with these services, Mother has failed to successfully complete most of the services and had also failed to positively adjust her circumstances and conduct on a continuing basis so that she can provide a proper home for the children, including but not limited to the following: Mother has failed to address her substance abuse issues, failed to establish stable housing for the children, and she has failed to consistently provide random urinalysis samples. Furthermore, the mother has not had contact with the children since October 2016 due to her own volitional conduct and lack of participation in this case. Due to the mother's lack of progress in the underlying action, the Court has not yet resumed visitation with the mother due to the inability to ensure the children's safety while under her care. ...

There was credible evidence presented that Mother has a chemical addiction which currently prevents her from consistently providing the necessary care, custody and control of her children, and which cannot be treated so as to enable her to consistently provide such care, custody and control over the children. As stated in paragraph 15(b), Mother has an extensive pattern of substance abuse such that this was the third time the family was under this Court's jurisdiction due in part to the mother's substance abuse issues. The mother has tested positive for marijuana and/or phencyclidine. Mother has consistently failed or refused to participate in and successfully complete any substance abuse program since the initiation of the September 2015 abuse and neglect action. The Court finds that the mother's failure to adequately address the barriers to reunification including, but not limited to, her substance abuse issues, prevent her from adequately providing the above-captioned children with the requisite care, custody, and control.

Mother does not dispute that the findings by the court, viewed in the light most favorable to the judgment, are supported by substantial evidence in the record. Her contention is that "the court below failed to give sufficient merit and weight to the mother's testimony regarding her commitment to treatment for her chemical dependency." Likewise, she argues that she "testified

that she is attempting to find employment and desires to have her children with her,” and the “court failed to give adequate weight to her testimony.” She argues that the court’s failure to give sufficient weight to her testimony rendered its findings based on insufficient evidence to support a finding of clear, cogent and convincing evidence justifying termination of her parental rights. We disagree.

As discussed above, weighing the evidence and assessing the credibility of that evidence is within the trial court’s exclusive province and “a trial court is free to disregard testimony in making credibility determinations and weighing evidence.” *In re Q.A.H.*, 426 S.W.3d 7, 9 (Mo. banc 2014). It is clear that the trial court considered Mother’s evidence, as reflected in the court’s finding that, although “Mother testified that she has not used any illegal substances since May 2017 . . . the Court finds such testimony to not be credible.” The court explains within the Judgment why it discredits Mother’s testimony, including that she had a child born in February of 2017 drug exposed to PCP and marijuana, that a random urinalysis in March 2017 was positive for PCP and alcohol, that Mother had failed to provide random urinalysis samples since that time, and that Mother testified to drug use in May 2017. The court found that between December 2015 and February 2017, Mother tested positive four times and failed to appear for testing at least fifty-seven times. Mother fails to explain how her own unsubstantiated averments that the court found lacking in credibility could render substantiated, credible evidence insufficient to support the court’s findings.

We find clear, cogent, and convincing evidence supporting the circuit court’s judgment under Section 211.447.5(3) that harmful conditions attributable to Mother persist, with little likelihood the conditions will be timely remedied to allow reunification of the children with Mother in the near future.

Mother's second point on appeal is denied.

Point IV – Children's Best Interest Pursuant to Section 211.447.6

In their fourth points on appeal, Father and Mother contend that the circuit court erred in finding termination of parental rights to be in the best interest of the children pursuant to Section 211.447.6.

We review the circuit court's determination that termination of parental rights was in the children's best interest for an abuse of discretion. *In Interest of A.C.G.*, 499 S.W.3d 340, 349 (Mo. App. 2016).

Here, the court considered the factors set forth in Section 211.447.7 in reaching its ultimate conclusion that a preponderance of the evidence showed termination of parental rights to be in the children's best interest. The court made the following findings in support:

- a) The children have some emotional bonds to Father and Mother, but have had no contact with Father since June 2017, or with Mother since October 2016. Contact by parents was sporadic throughout the underlying abuse and neglect action. T.L.-07 expressed fear of Father.
- b) Father has provided minimal support, financial or otherwise, since the children were placed in foster care in September 2015. Father's only notable contributions were one sucker (for four children) and a pair of shoes for one of the children. Mother has failed to support, financial or otherwise, the children since they were placed in foster care in September 2015.
- c) Additional services would be unlikely to bring about a lasting parental adjustment enabling return of the children to either parent within an ascertainable period of time. Both parents were provided services for approximately two years and had not achieved sufficient progress in parenting skills.

- d) Given both parents' inconsistent participation in offered services, lack of consistent visitation with the children, lack of support, financial or otherwise, and failure to address the concerns that brought the children under jurisdiction, there was little likelihood the conditions could be timely remedied to allow safe return of the children to parental care.
- e) This was the third time the family had been under the court's jurisdiction and the barriers to reunification in the instant matter were substantially similar to those in the previous abuse and neglect actions regarding the children. Consequently, "the parents have failed to adequately demonstrate their abilities to ameliorate their parenting skills and conduct in order to safely parent the children."
- f) The parents have demonstrated a disinterest and lack of commitment to the children by failing to consistently participate in services, adjust their circumstances so that they could safely parent the children, and failing to address their substance abuse issues.
- g) The children are in need of and deserve a stable and permanent home.

Father's Claims

Father does not dispute that a preponderance of the evidence, viewed in the light most favorable to the judgment, supports the court's conclusion that termination of parental rights is in the children's best interests. Father suggests, however, that the court failed to base its best interest determination on the requisite "totality of the circumstances" standard. He argues that the court failed to include significant evidence in its analysis, such as Father's visitation being hampered by the parent aide and foster mother, Father's visitation being hindered by Father's shoulder surgery, and that there is no adoptive resource for the children. Father argues that the court downplayed certain evidence beneficial to Father, such as the children enjoying visits with Father, ignored other evidence, such as there being a delay in authorization of a parent aide and the parent aide canceling

visits, and misinterpreted evidence, such as T.L.-07's fear of Father. Consequently, Father argues that the court erred in finding the children lacked an emotional bond to Father, erred in finding Father failed to consistently visit the children, erred in finding that Father provided minimal support to the children, erred in finding that additional services would not bring about lasting parental adjustment, and erred in finding that Father demonstrated a disinterest or lack of commitment to his children.

Addressing Father's claims as presented would require us to reweigh the trial evidence. As explained above, we cannot. Father appears to suggest that because the trial court did not acknowledge every piece of Father's evidence in the Judgment, the trial court did not consider this evidence. We find nothing in the record suggesting that the court did not consider all of the evidence as well as the totality of the circumstances. We find that a preponderance of the evidence supports the court's conclusions regarding the children's best interests.

Regarding the children's emotional bond to Father, therapist Keith Hayes had been working with all of the children for approximately a year and a half prior to trial. According to Hayes, all of the children reported witnessing physical abuse and drug use when they resided with their parents. The children reported to Hayes that visitation with their parents was sporadic. Hayes testified that the sporadic visitation negatively impacted the children, particularly T.L.-07. Hayes testified that T.L.-07 was diagnosed with post-traumatic stress disorder and this manifested in symptoms of anger and fear. T.L.-07 told Hayes that he was scared of Father. He explained to Hayes that he was scared of his father because he witnessed a physical altercation between his father and his mother, and that he smelled drugs on his father. While T.L.-07 reported a fear of Father, he would "shut down" when Hayes attempted to explore that issue further, indicating to Hayes that T.L.-07 feared to elaborate in the event his statements would get back to Father resulting

in repercussions for T.L.-07. Hayes testified that the children were “ambivalent” with regard to returning to their parents. The children reported that they were in an unstable environment when residing with their parents and did not want to return to that type of setting.

Hayes reported that the children expressed a love for their parents and that they wished they could be with them, but knew that was not possible. Hayes testified that the children rarely spoke about Mother, however, as if they did not expect to see her again. Hayes testified that it is common for children in foster care to love their parents but still not want to return to the environment they were previously in with their parents. Since working with the children regarding anxiety and stability, Hayes had observed progress in the children. Hayes expressed concern that the children would regress if returned to parental care if the issues that brought the children into care had not been rectified.

With regard to parental visitation, parental commitment to the children, and the anticipated success of further services, the court was not required to credit Father’s testimony or weigh it equally with conflicting evidence. The termination hearing was September 18, 2017. Although Father testified that he had not visited the children or submitted to drug testing since June 2017 due to shoulder surgery and an inability to leave the home, Father testified he “maybe went to church a couple of times” during that time frame. He testified that he voluntarily suspended visits with his children because he could not lift, hold, or feed his youngest child, a baby, and the Children’s Division would not allow him to visit his older children separately. He testified that he had been cleared by his doctor to engage in activities in August, but that it was the fault of the Children’s Division that he had no visits after being cleared. Although he claimed to be drug free since a drug test in June 2017 showed the presence of marijuana, he never submitted to testing

after that date. When asked the last time he used drugs he responded, “I don’t know. It’s been a while.”

With regard to Father’s support of his children, the Children’s Division testified that Father brought one sucker to a visit and gave a pair of shoes to one child. The court was not required to believe Father’s testimony that he gave K.L.-05 \$100, T.L.-08 \$100, and K.L.-11 \$60-\$70 for their birthdays, or that he provided “items” at his visits. Nevertheless, Father testified to receiving \$735 per month in disability beginning August 2016, as well as two years back pay in “lump sum” payments and \$194 each month in food stamps. Father was residing with his grandmother at the time of trial. When asked what he spent his money on he indicated “storage” for his things, “burial plans,” “living expenses,” and “yes, I do give my grandmother things.” Even crediting all of Father’s testimony regarding support of his children, given Father’s income and apparent lack of personal expenses, the court’s conclusion that Father “has provided minimal support, financial or otherwise, for the children since the children were placed in alternative care in September 2015” is supported by substantial evidence.

The court’s judgment reflects that the court considered the totality of the circumstances in reaching its conclusions regarding the children’s best interests. While both Father and Mother argue that they are drug free and in a position to safely care for their children, the record does not support these claims. Neither parent disputed the underlying allegations that brought their children under the court’s jurisdiction on three separate occasions. Both Father and Mother were using marijuana and PCP in 2007 when T.L.-07 was born.⁶ The parents were given the opportunity to care for K.L.-05 and T.L.-07 in their home at that time, but essentially declined when they refused

⁶ Father’s drug history predates 2007 as evidenced by 2006 drug convictions.

to participate in court-ordered drug treatment and continued to use drugs.⁷ The children were placed in foster care approximately five months later when police found what appeared to be crack cocaine in Father's and Mother's car. Father tested positive for marijuana around that same time. At the time of the termination of parental rights hearing in September 2017, K.L.-05 and T.L.-07 had spent nearly four years of their lives in foster care; T.L.-08 and K.L.-11 had spent nearly three.

Although Father testified at trial that he quit using all marijuana when he was told by Children's Services that his marijuana use "was hindering" his children, Father was on notice at least as early as August of 2007 that his marijuana use was unacceptable and considered harmful to the children. At that time the court sustained jurisdictional allegations that the children were without necessary care, custody, and support because Father "[u]ses illegal substances, including PCP and Marijuana, such that his ability to parent is severely impaired." The court included Father's 2006 drug convictions for trafficking and possession, as well as Father's positive drug tests for PCP and THC from June and early July 2007, in the jurisdictional order. On December 18, 2007, Father stipulated to the Juvenile Officer's Motion to Modify that K.L.-05 and T.L.-07 were without proper custody, support or care necessary for their well-being because the parents continued to possess and use illegal substances, including marijuana and crack cocaine, significantly impairing their ability to parent, and that Father tested positive September 4, 2007, for marijuana. Even after the children were returned to the parents in 2008, removed in 2011 for parental drug use, and returned again in 2012, both parents were still using PCP and marijuana in 2015 which caused the children to be placed again in foster care. Moreover, Father's claim that

⁷ When Father was asked at trial if he completed drug court he stated, "No, I didn't. I put myself in prison, ma'am, so I – so my children could come back home."

he was unaware until June of 2017 that his marijuana usage was “hindering” return of the children to his care is simply implausible.⁸

The court’s findings are supported by the record and show that the court considered the totality of the circumstances in reaching its conclusions. We find no abuse of discretion in the court’s determination that a preponderance of the evidence supports termination of Father’s parental rights to be in the children’s best interest.

Father’s fourth point on appeal is denied.

Mother’s Claims

Mother makes no argument that a preponderance of the evidence does not support the court’s conclusion that termination of parental rights is in the children’s best interest. She rests her claims that the court erred in determining termination to be in the children’s best interests on the contention that the court erred in concluding that grounds for termination of her parental rights existed under Sections 211.447.5(2), 211.447.5(3), and 211.447.5(6). As we previously concluded that the court did not err in finding termination of parental rights justified under Section 211.447.5(3), we need not address Mother’s fourth point further.

We find no abuse of discretion in the court’s determination that a preponderance of the evidence supports termination of Mother’s parental rights to be in the children’s best interest.

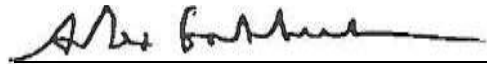
Mother’s fourth point on appeal is denied.

⁸ While Father argues that his most recent drug use was for “pain management” of a 2014 arm injury and later shoulder surgery, the court was not required to accept this explanation given Father’s long history of drug use prior to 2014 and Father’s testimony that he turned to illegal drugs for pain management in lieu of using prescribed medication. Even if true, it would not prevent a conclusion that Father’s continued illegal drug use has impaired his ability to parent and has harmed his children.

Conclusion

We conclude that the circuit court did not err in terminating Father's and Mother's parental rights pursuant to Section 211.447.5(3). Clear, cogent, and convincing evidence supported the circuit court's Judgment that harmful conditions attributable to both parents persist, with little likelihood the conditions will be timely remedied to allow reunification with the children in the near future. Further, the circuit court did not abuse its discretion in finding termination of Father's and Mother's parental rights to be in the best interest of the children pursuant to Section 211.447.6.

We affirm the circuit court's judgment.

A handwritten signature in black ink, appearing to read "Anthony Rex Gabbert", is written over a horizontal line.

Anthony Rex Gabbert, Judge

All concur.