

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Involuntary Termination  
of the Parent-Child Relationship  
of K.T. (Minor Child), and C.B.  
(Mother) and J.T. (Father),  
*Appellants-Respondents,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

May 4, 2022

Court of Appeals Case No.  
21A-JT-2547

Appeal from the Scott Superior  
Court

The Honorable Marsha Owens  
Howser, Judge

Trial Court Cause No.  
72D01-2009-JT-000080

**May, Judge.**

- [1] C.B. (“Mother”) and J.T. (“Father”) (collectively, “Parents”) appeal the involuntary termination of their parental rights to their child, K.T. (“Child”). Parents argue their due process rights were violated when the trial court held the termination fact-finding hearing even though Parents were not in attendance. Parents also argue it was not in Child’s best interest to terminate Parents’ parental rights. We affirm.

## Facts and Procedural History

- [2] Mother gave birth to Child on June 6, 2018. The Department of Child Services (“DCS”) completed an investigation shortly after Child’s birth because Mother was hospitalized due to her mental health issues and Father was unable to care for Child. DCS placed Child in foster care. Parents later entered into an informal adjustment with DCS, and DCS returned Child to Parents’ home.
- [3] In visits to Parents’ home as part of the informal adjustment, the Family Case Managers (“FCMs”) noted

### 2. On August 3, 2018 . . .

A. Father did not want to initially let FCMs in the home because of aggressive animals.

B. Father stated that Mother was due to be released from Richmond State Hospital the following Tuesday.

C. Father did not have a working phone.

D. Father did not have an appropriate crib for [Child], but did have a pack ‘n’ play, a car seat, one pack of diapers, and some infant clothes.

E. Father’s only income was a monthly check for \$750.00.

3. On August 17, 2018 . . .

A. Father, Mother, and Father’s mother and uncle were present.

B. Mother had been discharged from Richmond State Hospital.

C. FCM Peacock brought infant formula and a bottle. FCM asked Mother and Father to make 4 ounces of formula in the bottle.

D. Mother stated she had to leave for Madison, refused to participate in the exercise, and demanded that Father make the formula.

E. FCM insisted that Mother participate.

F. Mother and Father were unable to properly make the formula, despite directions, which were contained in the formula packaging.

G. FCM was concerned that Mother and Father did not know how to feed [Child] properly and that [Child] would not thrive.

H. FCM also spoke with the family about the concern of second hand smoke in the home.

I. FCM observed loose tobacco and a crushed cigarette on the floor. FCM also observed several medications set out on the coffee table. FCM voiced concerns about SIDS and asthma due to the amount of smoke in the home.

J. FCM observed several animals in the home. The animals had not had any vaccines and had not been to the vet because no one in the home had funds to due [sic] so.

K. FCM viewed Mother and Father's room, which had the crib and the pack 'n' play. Both were filled with numerous items. FCM advised that the items would been [sic] removed before [Child] could sleep in either the crib or the pack 'n' play.

L. Mother had her psychiatric medications and reported that Mother was seeing someone at Centerstone. Mother reported that she received some medication by injection, and that the next injection is due on August 24, 2018 . . . Mother ha[d] not yet scheduled the appointment to receive this injection.

M. Mother and Father agreed to a drug screen. Father reported that he had taken one of his uncle's muscle relaxers, for which he had no prescription. Father stated he took medicine for his nerves, but was unable to produce a prescription.

N. Father's mother, who also lives at the residence, reported she is on house arrest for three years as a result of a conviction for disorderly conduct.

(Ex. Vol. I at 17-8.) On August 23, 2018, DCS filed a petition alleging Child was a Child in Need of Services (“CHINS”). On August 23, 2018, the trial court held its initial hearing on the CHINS petition, at which time Child was removed from Parents’ care and placed with a foster family, where he has remained throughout these proceedings.

[4] On September 11, 2018, the trial court held a hearing on the CHINS petition and adjudicated Child as a CHINS based on Parents’ admissions that they were unable to “supply [Child] with necessary food, clothing, shelter, medical care and supervision, and [Child] requires care that [Child] is not receiving at this time.” (*Id.* at 23.) The trial court issued its order adjudicating Child as a CHINS on September 24, 2018.

[5] On October 23, 2018, the trial court held a dispositional hearing. On December 12, 2018, the trial court entered its dispositional order. The order required Parents to, among other things, remain in weekly contact with the FCM; notify the FCM of any changes in address or arrests; allow the FCM and other service providers to make announced and unannounced visits to Parents’ home; enroll in programs recommended by service providers; maintain safe housing; maintain a legal source of income; refrain from the use or manufacture of illegal substances; abstain from the use of alcohol; obey the law; complete a parenting assessment and follow all recommendations; engage in home based counseling and services; submit to random drug screens; complete psychological evaluations and follow all recommendations therefrom; meet all personal

medical and mental health needs; and visit with Child. Father was also ordered to complete a substance abuse assessment and follow all recommendations.

[6] On May 23, 2019, the trial court issued an order on periodic case review finding, regarding Parents' participation in services thus far:

[Parents] have partially complied with [Child's] case plan. [Mother] participates in case-management and parenting services. She works closely with the service provider towards her goals and is eager to learn and participate in services. Despite working with the service provider several times a week, there has been minimal movement towards set goals. [Father] completed an AOD assessment and started services at LifeSpring. DCS and services providers were under the impression that he was participating in services at LifeSpring regularly, but FCM Sarah Bucy contacted LifeSpring and was advised that [Father] was discharged from the program due to non-compliance on December 27, 2018. His last appointment was on October 1, 2018. [Father] would cancel or was a no-call/no-show for all appointments thereafter until his discharge.

DCS has continuous concerns regarding [Parents'] ability to provide a safe, stable and nurturing environment for [Child]. DCS has concerns for the home conditions of [Parents'] apartment, including roaches throughout the apartment, that would be unsafe for [Child].

[Parents] have enhanced their ability to fulfill their parental obligations.

[Parents] have visited [Child]. [Mother] consistently visits [Child]. [Father] has visited [Child] in the past, but these visits have been inconsistent. [Father] has missed more than 50% of the scheduled visitations with [Child]. At the visits he does

attend, he is not regularly engaged in the visit, [Father] complains during the visit and often states that he is tired. He is sometimes reluctant to bottle feed, change diapers or hold [Child].

[Parents] have not cooperated with DCS.

(*Id.* at 29-30.)

[7] On June 25, 2019, the trial court entered an order approving concurrent permanency plans of reunification and termination of parental rights. In that order, the trial court found, regarding Parents' participation in services:

8. [Parents] have partially complied with [Child's] case plan. [Mother] attends visitation with [Child], but has failed to follow through with DCS' recommendations and court-ordered services. [Mother] did complete a psychological evaluation, and FCM Bucy received the results of that psychological evaluation on June 24, 2019. Several concerns were noted regarding [Mother's] mental instability and ability to appropriately parent [Child]. [Mother] was arrested along with [Father] on various drug related charges on April 24, 2019. [Mother] was released, but [Father] remains incarcerated.

[Father] completed an AOD assessment with NYAP on March 19, 2019, which recommended NYAP substance abuse group, individual therapy and casework. At the time of the assessment, [Father] submitted to a urine drug screen, which returned positive for Opiates, Morphine and THC. [Father] was immediately referred to NYAP for outpatient services. [Father] frequently missed appointments and was discharged from the program for non-compliance. [Father] was previously discharged from LifeSpring for non-compliance. [Father] is currently

incarcerated and unable to participate in court-ordered services or visits with [Child].

9. A case conference and/or family team meeting was not held because [Parents] were incarcerated for a period of time, and one was not able to be scheduled.

(*Id.* at 32-3.)

[8] On December 16, 2019, the trial court issued an order that changed Child's permanency plan from reunification to termination of parental rights based on Parents' continued non-compliance or lack of progress in services. In addition to non-compliance in services, the trial court noted Mother and Father did not have suitable housing and were not employed. On January 22, 2020, DCS moved to terminate all services offered to Parents because "[Parents] are not participating in services and are not in compliance with [Child's] case plan." (*Id.* at 38.) On February 4, 2020, the trial court held a hearing on DCS's motion and granted the request the same day. On July 17, 2020, the trial court issued an order approving a permanency plan of termination of Parents' parental rights and adoption of Child by foster parents. In that order, the trial court found:

8. [Parents] have not complied with [Child's] case plan. [Mother] is not taking her medication or attending therapy regularly. [Mother's] therapist reported that [Mother] or family members have called in for emergency situations, but that she does not attend therapy sessions. The therapist reported that there was incident in which [Mother] had a knife and was



attempting to cut [Father's] eyebrows off. The therapist also noted that [Mother] often has homicidal ideations.

[Father] has been noncompliant with DCS and has refused to meet FCM Vires since she was assigned to the case.

(*Id.* at 51.) On September 22, 2020, DCS filed its petition to terminate Parents' parental rights to Child.

[9] On May 6, 2021, the trial court held a fact-finding hearing on DCS's termination petition. Parents did not attend but were represented by counsel. During the hearing, Parents' counsel indicated he had "not heard anything from both of them for quite some time" and did not request a continuance. (Tr. Vol. II at 5.) The trial court heard testimony and received evidence regarding Parent's non-compliance with services, Mother's sporadically-treated mental health issues, Father's substance abuse, and Child's progress in foster care. The FCM testified Parents called her in "early March of 2020" to ask how Child was doing, (*id.* at 26), but the trial court also noted, "[Parents] haven't seen [Child] in over a year." (*Id.* at 52.) Based thereon, the trial court issued its order terminating Parents' parental rights to Child on October 20, 2021.

## Discussion and Decision

[10] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences

most favorable to the judgment. *Id.* In deference to the juvenile court's unique position to assess the evidence, we will set aside a judgment terminating a parent's rights only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied, cert. denied* 534 U.S. 1161 (2002).

[11] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of parents to those of children when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one's own children should not be terminated solely because there is a better home available for the children, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet parental responsibilities. *Id.* at 836.

## 1. Due Process

[12] Parents argue the trial court violated their due process rights by holding the termination fact-finding hearing without Parents present. Parents recognize this issue has been waived for appeal because they did not request a continuance or otherwise raise the issue before the trial court. *See A.S. v. Indiana Dep't of Child Servs.*, 175 N.E.3d 318, 322 (Ind. Ct. App. 2021) (argument waived when presented for the first time on appeal). Waiver notwithstanding, we will briefly address the issue.

[13] First, should there be an error, Parents invited that error. There is no indication in the record that they were involuntarily unable to attend the termination fact-finding hearing. Rather, it appears they voluntarily chose not to appear. *See C.T. v. Marion Cnty. Dept. of Child Servs.*, 896 N.E.2d 571, 580 (Ind. Ct. App. 2008) (“In failing to respond to his attorney’s letters or to communicate with his attorney prior to the termination hearing, despite his actual knowledge of the hearing, Brown has invited the alleged error of which he now complains. Error invited by the complaining party is not reversible error.”), *trans. denied*. Additionally, there is no constitutional requirement that Parents attend the termination hearing, as long as they are represented by counsel who presents argument and cross examines witnesses. *See J.T. v. Marion Cnty. Ofc. of Family & Children*, 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000) (no fundamental error when father not physically present at termination hearing because father was represented by counsel who presented argument and cross-examined witnesses), *reh’g denied, trans. denied, abrogated on other grounds by Baker v. Marion Cnty. Ofc. of Family & Children*, 810 N.E.2d 1035, 1039 (Ind. 2004). Parents’ counsel presented argument and cross-examined witnesses. Based thereon, we cannot say Parents’ due process rights were violated when the trial court did not postpone the termination fact-finding hearing because Parents voluntarily failed to attend.

## 2. Child’s Best Interests

[14] To terminate a parent-child relationship, the State must allege and prove:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must provide clear and convincing proof of these allegations. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. If the court finds the allegations in the petition are true, it must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

[15] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98,

102 (Ind. 1996). If the evidence and inferences support the juvenile court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Parents do not challenge specific findings, and thus they must be accepted as correct. *See Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992) ("Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.").

[16] In determining what is in Child's best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent's historical inability to provide a suitable environment, along with the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). Parents argue:

While Parents did not complete all services offered to them, they did have periods of partial compliance where they were utilizing services provided for their specific needs. Father had participated in some of the homebased case work and a substance abuse assessment. Mother had participated in some of the homebased case work and recognized the need to address her mental [sic] health issues. Parents participated in visitation with the Child and the skills training and redirection they received during visitation. Termination did not provide any additional stability or certainty for the Child because the plan was for the Child to be adopted by the current foster home providers. Termination only served to remove services from both Parents and Child. Thus, termination was not in the Child's best interests.

(Br. of Appellants at 16.)

[17] Regarding the Child's best interests and other factors supporting termination of Parents' parental rights, the trial court found:

12. [Child] was initially detained from [Parents] because [Parents] were unable to provide proper care for [Child]; substance abuse issues of the Father; and mental health issues of the Mother.

13. The reasons underlying [Child's] detention on August 22, 2018 have not been remedied.

14. [Mother] has not demonstrated that she was able to comply with services that might have improved her parenting skills, nor has she demonstrated that she presently possesses the parenting skills necessary to properly care for and supervise [Child] and ensure his safety and well-being.

15. [Father] has not made any progress with regard to his substance abuse issues, and has not demonstrated that he is presently able to provide adequate care and supervision necessary to ensure [Child's] safety and well-being.

16. The DCS plan for [Child] is that he be adopted by his foster family, with whom he has been placed since initially being detained from his parents. The testimony presented indicates that [Child] is excelling and thriving in his placement.

(App. Vol. II at 106.)

The trial court found, based on the evidence and testimony presented, that the conditions under which Child was removed from Parents' care, specifically Mother's mental illness, Father's substance abuse, and Parents' general inability

to care for Child, had not been remedied. Further, the trial court found that Parents had not made any progress in services as to provide an environment that ensured Child's safety and well-being. Finally, the trial court found that Child's foster parents were willing to adopt him and that Child was excelling and thriving in his placement. Therefore, we conclude that the trial court's findings support its conclusion that termination of Parents' parental rights was in Child's best interests. *See K.T.K. v. Indiana Dept. of Child Servs., Dearborn Cnty. Office*, 989 N.E.2d 1225, 1236 (Ind. 2013) (conclusion that termination is in children's best interests is supported by mother's failure to remedy circumstances that led her to neglect and endanger children, children thriving in foster care, and children's need for permanency and stability).

## Conclusion

[18] Waiver notwithstanding, Parents' due process rights were not violated when the trial court held the termination fact-finding hearing without Parents present because (1) Parents invited any error by voluntarily not appearing and (2) Parents' due process rights were not violated because their counsel, who was present, made arguments and cross-examined witnesses on their behalf. Additionally, the trial court's findings support its conclusion that the involuntary termination of Parents' parental rights was in Child's best interests. Accordingly, we affirm the decision of the trial court.

[19] Affirmed.

Riley, J., and Tavitas, J., concur.