

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In Re: The Termination of the  
Parent-Child Relationship of  
N.D. (Minor Child);  
D.D. (Father),  
*Appellant-Respondent*

v.

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

March 14, 2023

Court of Appeals Case No.  
22A-JT-1097

Appeal from the Monroe Circuit  
Court

The Honorable Stephen R. Galvin,  
Judge

Trial Court Cause No.  
53C07-2106-JT-310

**Memorandum Decision by Judge Pyle**

Judges Bradford and Kenworthy concur.

**Pyle, Judge.**

## **Statement of the Case**

[1] D.D. (“Father”) appeals the termination of the parent-child relationship with his daughter, N.D. (“N.D.”). He argues that there is insufficient evidence to support the termination. Concluding that there is sufficient evidence to support the termination, we affirm the trial court’s judgment.<sup>1</sup>

[2] We affirm.

## **Issue**

Whether there is sufficient evidence to support the termination of Father’s parental relationship with N.D.

## **Facts**

[3] The evidence and reasonable inferences that support the judgment reveal that Mother and forty-six-year-old Father are the parents of N.D., who was born in April 2020, and M.D. (“M.D.”), who was born in July 2021. This appeal concerns only N.D.

[4] Father is also the parent of Mo.D. (“Mo.D.”), who was born in May 2000; K.D. (“K.D.”), who was born in May 2002; S.D. (“S.D.”), who was born in September 2005; and I.D. (“I.D.”), who was born in April 2007. The mother of

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<sup>1</sup> N.D.’s mother (“Mother”) voluntarily relinquished her parental rights and is not participating in this appeal.

these four children is B.D. (“B.D.”). In September 2010, the Department of Child Services (“DCS”) received a report that Father and B.D. had taken ten-year-old Mo.D., who was suffering from terminal cancer, to several different physicians to obtain multiple prescriptions for pain medications. Father admitted that he and B.D. had used the pain medications that the doctors had prescribed for Mo.D. DCS removed the children from Father and B.D. and placed them with their paternal grandparents. Mo.D. died in October 2010, and shortly thereafter, B.D. died from a drug overdose.

[5] In December 2010, the trial court adjudicated K.D., S.D., and I.D. to be children in need of services (“CHINS”) and ordered Father to complete services and abstain from the use of illegal drugs. Father, however, failed to comply with the trial court’s order and continued to use oxycodone and methamphetamine during the pendency of the CHINS proceedings.

[6] Also, during the pendency of that CHINS proceeding, Father became involved in a relationship with Ma.D. (“Ma.D.”). In November 2011, Ma.D. gave birth to Father’s child, C.D. (“C.D.”). Father and Ma.D. married in March 2012. At some point in 2012, DCS filed a petition alleging that C.D. was a CHINS because of Father’s drug use. The trial court adjudicated C.D. to be a CHINS in 2013 and later dismissed the case when Ma.D. dissolved her marriage to Father. The dissolution decree stated that Father’s visits with C.D. had to be supervised.

- [7] Also, in 2013, DCS filed petitions to terminate Father's parental relationships with K.D., S.D., and I.D. Two weeks before the termination hearing, Father tested positive for oxycodone. The trial court terminated Father's parental relationships with K.D., S.D., and I.D. in June 2013.
- [8] In 2014, Father pleaded guilty to Class B felony dealing in methamphetamine and Class A misdemeanor possession of paraphernalia. The trial court sentenced him to eight years, with five years suspended. Father was released from incarceration in December 2015.
- [9] Father subsequently became involved in a relationship with Mother. When their daughter, N.D., was born in April 2020, the newborn tested positive for methamphetamine and amphetamine and suffered from neonatal abstinence syndrome. Father acknowledged that he had known that Mother had been using methamphetamine while she was pregnant. In addition, Father tested positive for methamphetamine and amphetamine shortly after N.D.'s birth.
- [10] DCS removed N.D. from Father and Mother because of their drug use and placed her with relatives. DCS also filed a petition alleging that N.D. was a CHINS. The trial court adjudicated N.D. to be a CHINS in June 2020. In July 2020, DCS placed N.D. with a foster family. Also in July 2020, the trial court entered a CHINS dispositional order that required Father to work with a recovery coach on relapse prevention, participate in random drug screens, abstain from the use of illegal substances, and attend supervised visits with N.D.

[11] During the pendency of the CHINS proceedings, Father continued to use methamphetamine. DCS referred Father to a recovery coach at Centerstone. However, the recovery coach closed Father's chart due to noncompliance when Father cancelled his scheduled appointment the day of the appointment and had no further contact with her.<sup>2</sup> Although Father visited with N.D. throughout 2020 and 2021, the supervised visits never progressed to unsupervised visits because Father continued to use illegal substances and was not compliant with the court-ordered services. In June 2021, DCS filed a petition to terminate Father's parental rights.

[12] At the two-day March 2022 termination hearing, Father acknowledged that he was still struggling with sobriety and had used methamphetamine as recently as February 2022. When asked how much longer it would take for him to be drug-free, Father responded that he "wish[ed] he knew that answer." (Tr. Vol. 2 at 65). He asked the trial court "for a little more time . . . [t]o show that he c[ould] get this sobriety on track." (Tr. Vol. 2 at 129).

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<sup>2</sup> We acknowledge Father's participation in the Groups Recover Together program ("the Groups program"), which is an outpatient medication-assisted treatment program for individuals who have been diagnosed with an opiate use disorder. The Groups program provides weekly group therapy sessions and prescribes medications, such as Suboxone. Participants in the Groups program take drug tests at home and report their results to their counselors. Specifically, participants are given cups with strips on the sides of the cups that test for a variety of drugs. Participants urinate into the cups at home, take pictures of the cups to show their test results, and email or text the photos to their counselors. DCS Family Case Manager Jamie Bennett ("FCM Bennett") testified that DCS does not recognize participation in the Groups program because "the way that they conduct their group is not always within the requirements of what DCS asks." (Tr. Vol. 2 at 230). FCM Bennett further testified that DCS does not accept the results of the Groups program's drug screens. We further note that Father's counselor at the Groups program testified that he did not know that Father had continued to use methamphetamine.

[13] Also at the hearing, FCM Bennett testified that in January 2022, the visitation facilitator had closed Father's case for non-compliance after he had missed a month of visits. Although DCS had subsequently offered Father a four-hour visit with N.D., Father had not attended the visit because he had overslept. FCM Bennett further testified that N.D. had lived with the same foster family for nearly two years and was "doing incredibly well." (Tr. Vol. 2 at 211). FCM Bennett also testified that N.D.'s biological brother, M.D., had been placed in the same foster family. Like N.D., M.D. had tested positive for methamphetamine at birth and had been removed from Father and Mother because of their drug use. In addition, FCM Bennett testified that N.D. had a strong bond with the foster parents' biological child. According to FCM Bennett, the foster family planned to adopt N.D. FCM Bennett also testified that termination was in N.D.'s best interests so that N.D. could achieve permanency in a stable drug-free home.

[14] In addition, CASA Anne Owens ("CASA Owens"), who had spent over 500 hours on the case, also testified that termination was in N.D.'s best interests. CASA Owens further testified that she had not had contact with Father because he had never returned her telephone calls.

[15] In April 2022, the trial court issued a detailed twenty-two-page order terminating Father's parental relationship with N.D. Father now appeals.

## Decision

[16] Father argues that there is insufficient evidence to support the termination of his parental relationship with N.D. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Offices*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[17] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[18] A petition to terminate parental rights must allege:

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

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

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(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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231.

[19] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record.” *Id.*



- [20] Here, Father first argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in N.D.'s removal or the reasons for her placement outside the home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to N.D.'s well-being.
- [21] However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in N.D.'s removal or the reasons for her placement outside the home will not be remedied.
- [22] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires a trial court to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior criminal history, drug and alcohol abuse, history of neglect,

failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring a trial court to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *E.M.*, 4 N.E.3d at 643.

[23] Here, our review of the evidence reveals that Father has a long history of using illegal drugs, including methamphetamine. In 2013, the trial court terminated Father's parental relationships with three of his children and adjudicated a fourth child to be a CHINS because of Father's drug use. Seven years later, DCS removed N.D., who tested positive for methamphetamine at birth, because of Father's drug use. Father continued to use illegal substances during the pendency of N.D.'s CHINS proceedings and tested positive for methamphetamine just a few weeks before the termination hearing. In addition, Father failed to successfully complete court-ordered services. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in N.D.'s removal or the reasons for placement outside her home will not be remedied.

[24] Father also argues that there is insufficient evidence that termination is in N.D.'s best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of

the evidence. *In re Termination of the Parent-Child Relationship with D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child’s emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* In addition, a child’s need for permanency is a central consideration in determining the child’s best interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the child’s best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[25] Here, our review of the evidence reveals that FCM Bennett and CASA Owens both testified that termination was in N.D.’s best interests. FCM Bennett further testified that it was in N.D.’s best interests to achieve permanency in a stable drug-free home. The testimony of these service providers, as well as the other evidence previously discussed, supports the trial court’s conclusion that termination was in N.D.’s best interests.

[26] We reverse a termination of parental rights “only upon a showing of ‘clear error’—that which leaves us with a definite and firm conviction that a mistake has been made.” *Egley v. Blackford County Department of Public Welfare*, 592

N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

[27] Affirmed.

Bradford, J., and Kenworthy, J., concur.