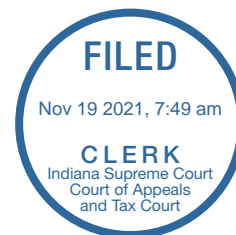


## MEMORANDUM DECISION

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 Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of G.D. (Minor  
Child) and

J.A. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

November 19, 2021

Court of Appeals Case No.  
21A-JT-719

Appeal from the Shelby Superior  
Court

The Honorable R. Kent Apsley,  
Judge

Trial Court Cause No.  
73D01-2009-JT-11

**Crone, Judge.**

## Case Summary

- [1] J.A. (Father) appeals the involuntary termination of his parental rights to his minor child, G.D. (Child). We affirm.

### Facts and Procedural History

- [2] Child was born on February 6, 2019. Her mother is J.D. (Mother). Child was born “with illicit substances [including benzodiazepines, opiates, and THC] in her system and suffered from withdrawal symptoms due to Mother’s use of illicit substances during her pregnancy.” Appealed Order at 2. Father was incarcerated at the time of Child’s birth. Child was detained by the Indiana Department of Child Services (DCS) before being released from the hospital. DCS filed a child in need of services (CHINS) petition alleging that Child was in need of services due to being born with illicit substances in her system, Mother’s diagnosis with a heart infection and need for surgery from using intravenous drugs, and Father’s incarceration. A combined detention and initial hearing was conducted on February 25, 2019. Father admitted that Child was a CHINS, and Child was removed from both parents’ care and placed in kinship care.<sup>1</sup> During a factfinding hearing held on April 29, 2019, Mother also admitted that Child was a CHINS. The trial court formally adjudicated Child a CHINS on June 2, 2019.

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<sup>1</sup> Prior to Child’s birth, Father was unaware that he was her father. Accordingly, the trial court took Father’s CHINS admission under advisement pending the subsequent establishment of his paternity.

[3] Father was released from incarceration sometime in March 2019 but was reincarcerated in June 2019. On July 9, 2019, the trial court entered a dispositional order requiring Mother and Father to participate in multiple services to address their parenting deficiencies. The services were aimed at having both parents accomplish four principal goals:

- a. Living a life free from addiction to illicit substances;
- b. Addressing all mental health and physical health needs;
- c. Providing a safe and appropriate living environment for [Child], including appropriate parenting skills; and
- d. Obtaining and maintaining appropriate housing and employment.

*Id.* at 6.

[4] Although Mother participated in ordered services, she was always “open about the role she played in the removal” of Child from the home. *Id.* Indeed, from the time of the first review hearing in December 2019, Mother acknowledged that adoption was in the best interests of Child. Consequently, on July 16, 2020, Mother signed a consent for Child’s adoption by her current placement family.

[5] Father has an extensive criminal history including multiple battery and drug-related convictions, and, other than his brief release in March 2019, Father has remained incarcerated Child’s entire life. On or about June 11, 2019, Father was arrested and charged with five counts of dealing in methamphetamine. He was subsequently convicted of one count of level 3 felony dealing in

methamphetamine and sentenced to ten years' imprisonment. His earliest possible release date is September 22, 2027. The trial court held review hearings in July and November 2020. The Court found that while Father had participated in services "to the degree he was able while incarcerated[,]” he “had not enhanced his ability to fulfill his parental obligations and was unable to do so due to his incarceration[,]” and that “a concurrent plan of adoption continued to be in the best interests” of Child. *Id.* at 7.

[6] DCS filed its petition to terminate Father’s parental rights on September 4, 2020. After several continuances, a factfinding hearing was held on March 3, 2021. On March 24, 2021, the trial court entered extensive findings of fact and conclusions thereon determining that DCS had established by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in Child’s removal and continued placement outside the home will not be remedied by Father; (2) there is a reasonable probability that continuation of the parent-child relationship between Father and Child poses a threat to Child’s well-being; (3) termination of the parent-child relationship between Father and Child is in Child’s best interests; and (4) DCS has a satisfactory plan for Child’s care and treatment, which is adoption. Accordingly, the trial court entered its order terminating Father’s parental rights. This appeal ensued.

## **Discussion and Decisions**

[7] “The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a

constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.” *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). “[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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 that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. 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.

*Id.* at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

[9] Here, Father does not specifically challenge the sufficiency of the evidence supporting any element of Indiana Code Section 31-35-2-4(b)(2). Rather he simply contends that his incarceration and “Child’s general need for permanency, without more, was an insufficient reason to terminate his parental rights.” Appellant’s Br. at 19. Father essentially argues that he did everything he could, while incarcerated, to participate in offered services and to satisfy the court’s dispositional order and that he should not be punished for being in prison and unable to provide the necessary care and support for Child. We interpret Father’s arguments on appeal as a general challenge to the trial court’s

conclusion that termination of his parental rights is in the best interests of Child.

[10] In determining what is in a 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, 224 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.* at 221. When making its decision, the court must subordinate the interests of the parent to those of the child. *In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[11] We find *Castro v. State Office of Family & Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006), *trans. denied*, instructive. There, Castro had been incarcerated during his minor child's entire lifetime. In 2004, when the child, T.P., was eight years old, DCS filed a petition to terminate the relationship between T.P. and both her parents. The evidence at the termination hearing revealed that Castro had held T.P. only one time and had seen her approximately only ten other times while incarcerated in the county jail. After he was sentenced to the Department of Correction, he had also written T.P. letters, which were conveyed to her through her therapist. The evidence further revealed that while incarcerated, Castro received a bachelor of general studies degree and completed parenting and anger management courses. His release date was May 2012.

[12] After hearing the evidence, the trial court issued its order terminating Castro's parental rights. Castro appealed and argued that DCS had failed to present clear and convincing evidence that termination of his rights was in T.P.'s best interests. This Court noted that a parent's historical inability to provide adequate housing and supervision, coupled with a current inability to provide the same, would support a finding that termination of the parent-child relationship is in the child's best interests. *Id.* at 374. Because he had been incarcerated since before T.P.'s birth, we concluded that Castro had historically been unable to provide adequate housing, stability, and supervision for her. *Id.* Likewise, his continued incarceration at the time of the 2005 termination hearing was strong evidence of his current inability to provide the same. *Id.*

[13] We further recognized that those who "pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Id.* (quoting *Matter of A.C.B.*, 598 N.E.2d 570, 572 (Ind. Ct. App. 1992)). We noted that there was no guarantee that Castro would be a suitable parent once he was released or that he would even obtain custody, and even assuming Castro would eventually develop into a suitable parent, we questioned how much longer T.P. had to wait to enjoy the permanency that was essential to her development. *Id.* at 375. In light of the foregoing, we held that the trial court's conclusion that termination of Castro's parental rights was in T.P.'s best interests was supported by clear and convincing evidence, and we affirmed the termination of the parent-child relationship. *Id.*



[14] As in *Castro*, Father was incarcerated at Child’s birth and has historically been unable to provide adequate housing, stability, and supervision for Child. His continued incarceration at the time of the termination hearing is indisputable evidence of his current inability to provide the same. Regarding his most recent level 3 felony dealing in methamphetamine conviction and sentence, Father concedes that his earliest possible release date is September 22, 2027, when Child will be eight years old. Additionally, Father has a history of violent criminal behavior, including multiple battery convictions, that the trial court found to be “of particular concern” and a possible “threat to the safety and well-being” of Child. Appealed Order at 8.

[15] Despite Father’s current claim of having a sincere desire to reunite with Child upon his release, the evidence reveals that during the short period when Father was not incarcerated from March 2019 to June 2019, Father did not contact DCS and did not attempt to visit with Child. Moreover, as in *Castro*, the trial court here specifically found that, despite Father’s participation in multiple services while incarcerated, there is no guarantee that he will be a suitable parent once he is released or that he would even obtain custody of Child. The trial court noted that, at the time of termination, Father still exhibited little understanding of what appropriate care and supervision of a child entails. Specifically, “Father equated having any contact with a child as having raised a child.” *Id.* Father referenced having “raised” each of his other seven children but admitted that he has had no recent, much less long-term, contact with most of them due to his constant and ongoing incarceration. *Id.*

[16] Sadly, to date, Father has never touched or held Child, and he has never spent more than forty-five minutes of supervised visitation with Child “through the glass” while incarcerated. *Id.* at 7. In short, Father and Child have formed no bond, and there is no evidence that Father is “any closer to [more or] unsupervised parenting time with [Child] than he was at the beginning of the CHINS case.” *Id.* at 13. In contrast, the evidence indicates that Child is closely bonded with her preadoptive parents, as they are the only parents she has ever known. Child need not wait another six or more years before enjoying the permanency that is essential to her development.<sup>2</sup> *See Castro*, 842 N.E.2d at 374 (citing *In re S.P.H.*, 806 N.E.2d 874, 883 (Ind. Ct. App. 2004)) (holding that needs of children were too substantial to force them to wait while determining if their incarcerated father would be able to be a parent for them).

[17] Contrary to Father’s assertion on appeal, this is not a case in which the trial court determined that termination of his parental rights was warranted solely because he is incarcerated. Rather, the trial court’s thoughtful findings of fact and conclusions thereon reveal that the court considered the totality of the circumstances, which included Father’s incarceration, and determined that

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<sup>2</sup> Father requested that the trial court take the termination petition under advisement for one year while he pursued an appeal of his most recent criminal conviction. However, the trial court accorded “little weight to Father’s statement that his criminal conviction is likely to be overturned.” Appealed Order at 13.

termination of the parent-child relationship was in Child's best interests.<sup>3</sup> That conclusion was not clearly erroneous. We affirm the trial court's termination of Father's parental rights.

[18] Affirmed.

Bradford, C.J., and Tavitias, J., concur.

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<sup>3</sup> The cases relied upon by Father are distinguishable. Regarding *In re G.Y.*, the mother was her child's sole caretaker for the first twenty months of his life. 904 N.E.2d 1257, 1258 (Ind. 2009). A year before the child's birth, the mother delivered drugs to a police informant and was arrested and incarcerated for that offense thirty-two months later when the child was twenty months old, and the trial court subsequently terminated her parental rights. *Id.* at 1258-59. Our supreme court reversed and observed that the mother's offense occurred before she became pregnant, there was no indication that she was anything but a fit parent during the first twenty months of the child's life, and she obtained post-release employment and suitable housing. *Id.* at 1262-63. The court also observed that the mother maintained a consistent, positive relationship with her child while incarcerated, she had a lot of interaction with the child during their visits, and she had demonstrated her commitment to reunification from "the very point of her arrest." *Id.* at 1264-65. Here, Father was incarcerated at the time of Child's birth, and he has never been her caretaker. While he was released for a short period following Child's birth, he did not contact DCS or attempt to visit with Child, which does not indicate that he was committed to reunification prior to his reincarceration. Also, Father's earliest release date is six years away and he has no plan for post-release employment or suitable housing. Unlike the mother in *G.Y.*, Father has not demonstrated that he ever has been or ever could be a fit parent.

Regarding *In re K.E.*, our supreme court reversed the termination of the incarcerated father's parental rights because the court believed that the trial court wrongfully relied only upon father's release date (which was less than a year away) and the child's general need for permanency in determining both that father posed a threat to the child's well-being and that there was no reasonable probability that the father could remedy the conditions that led to the child's removal and continued placement outside his care. 39 N.E.3d 641, 648 (Ind. 2015). Our supreme court noted that "the potential release date is only one consideration of many that may be relevant in a given case" and emphasized that the record clearly demonstrated that the incarcerated father had pursued every avenue possible to better prepare himself for parenthood after being released, had a plan to provide care and support for his child upon release, and had developed a strong and healthy bond with his child during his incarceration. *Id.* The record further demonstrated that the child would not be harmed if left in foster care for just a bit longer until the father would be released. *Id.* In contrast, Father's release date is six years away, and his long and violent criminal history makes him a potential safety risk to Child. Further, unlike in *K.E.*, there is no evidence that Father and Child have developed any bond. As noted by the trial court, Father has never held Child and "continues to receive limited parenting time with [Child] and only on a supervised basis[.]" and "it has never been recommended that Father's parenting time be relaxed to permit less than fully supervised parenting time." Appealed Order at 8, 13.