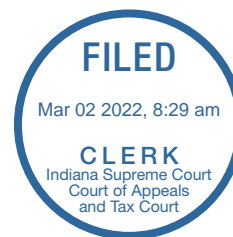


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Steven Knecht
Vonderheide & Knecht, P.C.
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

K.B. and O.B. (*Minor Children*),

and

R.B. (*Father*),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner,

March 2, 2022

Court of Appeals Case No.
21A-JT-1239

Appeal from the Tippecanoe Superior Court

The Honorable Faith Graham,
Judge

Trial Court Cause Nos.
79D03-2007-JT-33
79D03-2007-JT-34

Robb, Judge.

Case Summary and Issue

- [1] R.B. (“Father”) and T.B. (“Mother”) (collectively, “Parents”) are the parents of O.B. and K.B. (“Children”). In early 2018, the Children were each adjudicated a child in need of services (“CHINS”) and in July 2020, the Indiana Department of Child Services (“DCS”) filed a petition for the involuntary termination of Parents’ parental rights. On May 25, 2021, the juvenile court issued an order making findings and concluding Parents’ parental rights should be terminated. Father now individually appeals, raising one issue, which we restate as whether sufficient evidence supported the termination of Father’s parental rights. Concluding that clear and convincing evidence supports the termination, we affirm.

Facts and Procedural History

- [2] K.B. was born in Lake County in October 2017. At birth, both Mother and K.B. tested positive for cocaine. Mother expressed an intent to place K.B. for adoption, left K.B. at the hospital, and did not return.¹ DCS took K.B. into custody and placed her in foster care where she has remained ever since. On October 10, 2017, DCS filed a verified petition alleging K.B. to be a CHINS.
- [3] In November 2017, DCS received a report that Parents were living in Tippecanoe County with O.B. and that she was a victim of abuse or neglect due

¹ Father could not be located at that time.

to unstable housing, Parents' drug use, and Parents' inability to provide for her basic needs. Police found the three hiding in a relative's home. The living conditions were dirty and there were no beds for O.B. or Parents. Parents admitted to recently having used drugs and O.B. had a severe diaper rash which had not been treated. DCS removed O.B. and placed her in foster care where she has remained ever since. On November 14, 2017, DCS filed a verified petition alleging O.B. to be a CHINS.²

[4] In early 2018, each child, in separate proceedings, was adjudicated a CHINS.³ Dispositional hearings were held and the juvenile court ordered Parents, among other things, to: allow DCS, the court appointed special advocate ("CASA"), or service providers to make announced and unannounced visits to the home; follow all recommendations from any assessments or evaluations; follow all agreements with DCS, CASA, and other service providers; follow all safety plans; be honest with DCS, CASA, service providers, the court, and other parties involved in the case; and obey the law. Father was also ordered to participate in a substance abuse evaluation, an initial clinical assessment, home-based services, supervised parenting time, and to follow all resulting recommendations. The permanency plan was reunification.

² O.B. was born in May 2016 and, similar to K.B., was also exposed to drugs as an infant. O.B. was removed from Mother and placed with Father who agreed to keep Mother away from O.B. Mother was charged with neglect of a dependent; however, the charge was dropped and O.B. was returned to Mother's care.

³ K.B. was adjudicated a CHINS in Lake County. After adjudication, her case was transferred to Tippecanoe County where both Parents resided, Father currently resides, and O.B.'s case was proceeding. The Children have been together in the same foster home since November 2018.

[5] Between the dispositional hearings and November 2019, Father's participation and performance showed consistent improvement. Father completed parenting education and individual therapy, regularly provided clean drug screens, attended AA and NA meetings, participated in parenting time, maintained proper housing and employment, and engaged with service providers. His visitation time gradually increased and the level of supervision he required decreased. Meanwhile, Mother completely disengaged from the Children's case plan.⁴

[6] However, during this time Father began exhibiting concerning mental health patterns. He struggled to be accountable for his actions, shifted blame to Mother, fixated on Mother's actions and negative feedback from DCS, failed to accept constructive criticism, became increasingly distrusting of service providers, and started accusing service providers of attempting to sabotage him. His actions resulted in multiple changes to his service providers. Also, his fixations spilled over into visitations where he had to be regularly redirected to focus on the Children.

[7] In June 2019, worried that Father's behavior was a safety concern for the Children, DCS recommended a clinical interview designed to assess Father for potential cognitive impairment. The interview revealed that Father has limited cognitive ability, substantially impaired judgement, and a personality disorder.

⁴ Mother has not visited the Children since 2018, addressed her mental health issues, or engaged in services.

See Exhibits, Volume 2 at 219. Father’s disorder is characterized by lack of impulse control, issues with authority, and fixation “on his own perceived needs regardless of the legalities of his actions.” *Id.* Dr. Cathleen Amador, responsible for conducting the interview, noted that Father did not believe he needed to make any changes and at one point, Father exerted pressure on her to not recommend further therapy for him. *See* Transcript, Volume 2 at 43.

Nevertheless, Dr. Amador recommended that Father participate in cognitive behavioral treatment focused on decision making and that he address his irrational beliefs and patterns of behaviors affecting both his decision making and his general functioning, such as his refusal to hold himself accountable and his hostility toward service providers. *See Ex.*, Vol. 2 at 220. Dr. Amador opined that Father’s behavior was a concern regarding stability and predictability. If Father failed to address his issues, Dr. Amador was concerned for the well-being of the Children and their ability “to feel safe and develop normally and develop healthy emotional functioning.” *Tr.*, Vol. 2 at 48.

[8] Despite these issues, Father remained engaged in services. His visitations continued to increase and DCS was preparing for Father to start trial home visits with four overnights per week with the Children. However, Father’s problematic behaviors and mental health issues continued to grow and appeared to worsen with increased parenting responsibilities. Father, despite financial coaching from DCS, moved out of an affordable apartment and into a three bedroom home which caused significant financial strain. Father was forced to work overtime which in turn forced Father to rely heavily on childcare

services. However, Father could not maintain a consistent childcare provider as he was increasingly difficult to work with and levied multiple accusations that the Children were being physically abused by childcare providers.⁵

[9] Father was also increasingly hostile towards DCS and the Children's foster family. In the fall of 2019, he requested that the current family case manager ("FCM"), Justin Brownfield, be removed from the Children's case plan⁶ and also made threatening comments to the Children's foster mother. As a result, DCS created a safety plan for Father. Although Father initially agreed to the safety plan, he began fixating on the concerns listed in the safety plan which included his issues with childcare providers and budgetary concerns and retracted his agreement to the plan. He also continued to be consumed by the negative feedback listed on his progress reports such as the indication that his paranoia was increasing along with his growing parental responsibilities. However, Father did not want to improve or focus on the Children. Rather, he simply wanted the negative feedback removed from the reports and safety plan.

[10] In addition to Father's concerning actions, the Children started exhibiting troubling behaviors following visits with Father. The Children often returned from overnight visits with Father exhausted, fussy, and unwilling to stick to a

⁵ Father accused daycare providers of causing a large bruise on K.B.'s leg. However, an incident report filed by the daycare provider showed that, through no fault of the provider, the bruise was the result of K.B. falling into a chair. Father also alleged that daycare providers were keeping the Children in coats to induce fever, leaving the Children in dirty diapers to exacerbate rashes, and tampering with diaper rash cream.

⁶ Father's behavior towards FCM Brownfield became so hostile that FCM Brownfield would later seek and be granted a protective order against Father. Father's home-based service provider would also do the same.

schedule. O.B., nearly fully potty trained, would revert to wearing diapers all of the time. The Children's foster mother would have trouble getting the Children to follow a routine and the Children would throw tantrums, fight, cry, and soil themselves.⁷

[11] In November 2019, Father's behavior and engagement in the Children's case plan unraveled. He reported to FCM Jessica Lafler that he was feeling overwhelmed and that he needed a break from visits. Father then indicated that he no longer wanted overnights with the Children, started cancelling visits, and ultimately began refusing visits due to the safety concerns listed in his safety plan. Between November 2019 and April 2020, Father only attended eight visits.

[12] During this time period, Father was discharged from multiple services including his cognitive behavioral treatment, home-based services, and supervised parenting time and the permanency plan was changed to reunification with a concurrent plan for adoption. Father continued to levy accusations against those assigned to his case and as a result of his behavior DCS struggled to find service providers willing to work with Father.⁸ Multiple progress reports noted a consistent and growing concern regarding Father's paranoia and mental

⁷ These maladaptive behaviors continued throughout the duration of the Children's case plan and would dissipate when Children were not in contact with Father for any length of time.

⁸ In addition to accusations made against DCS and service providers, Father also accused the Children's doctor of conspiring against him.

health and the impact it was having on Father's engagement. In an attempt to help Father address his mental health issues, Father was referred for a psychological evaluation in the spring of 2020; however, he cancelled his appointment and refused to work with anyone referred by DCS. He indicated that he would arrange for his own psychological evaluation but never did. Additionally, the Children were referred for counseling intended to identify emotions, emotional regulation, and coping skills. Father was expected to participate so that he could learn to manage the Children's emotional responses, but Father did not believe the Children needed such counseling and refused to participate.

[13] In July 2020, DCS filed a petition to involuntarily terminate Parents' parental rights. A fact-finding hearing began on October 1, 2020, and due to multiple continuances was concluded on January 20, 2021. At the hearing, Father indicated that he has recently participated in some counseling and is currently on medication for anxiety and depression. However, neither development began until after DCS filed to terminate his parental rights. It was also determined that Father had completely disengaged from services and Father admitted to not having seen the Children since August 2020. Testimony offered by DCS highlighted that the Children were nevertheless thriving. The Children were bonded to their foster family and their maladaptive behaviors had disappeared once visits with Father stopped. The Children were expressing healthy emotional responses and engaging in healthy interactions with others. CASA William Gallagher testified that Father's behaviors are a threat to the

Children's emotional well-being and development. FCMs Lafler and Brittney Steiner as well as CASA Gallagher each testified that termination of parental rights was in the best interest of the Children.

[14] On May 25, 2021, the juvenile court issued findings of fact and conclusions of law and entered a judgment terminating Parents' parental rights. Father now appeals.

Discussion and Decision

I. Standard of Review

[15] The right of a parent to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *S.S. v. Ind. Dep't of Child Servs.*, 120 N.E.3d 605, 609 (Ind. Ct. App. 2019). Nevertheless, the law provides for termination of these constitutionally protected rights when parents are unable or unwilling to meet their parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish the parent, but rather to protect the child. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that support the judgment of the juvenile court. *Id.*

[16] In deference to the juvenile court's opportunity to assess the evidence, we will not set aside its judgement terminating a parent-child relationship unless clearly

erroneous. *In re EM*, 4 N.E.3d 636, 642 (Ind. 2014). When, as here, a judgment contains specific findings of fact and conclusions of law, we apply a two-tiered standard of review. *In re S.L.H.S.*, 885 N.E.2d 603, 615 (Ind. Ct. App. 2008). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* Findings are clearly erroneous when the record contains no facts or inferences to support them. *Id.* at 615-16. A judgment is clearly erroneous only if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment. *Id.* at 616.

II. Statutory Requirements

[17] To terminate a parent-child relationship, Indiana Code section 31-35-2-4(b)(2) provides the DCS must prove the following:

(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.

* * *

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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

* * *

(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.

The State must prove each element by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231; *see also* Ind. Code § 31-34-12-2. Because the provisions of Indiana Code section 31-35-2-4(b)(2)(B) are written in the disjunctive, DCS need only prove one of those statutory elements. *S.S.*, 120 N.E.3d at 610. If the juvenile court finds the allegations are true, the parent-child relationship shall be terminated. Ind. Code § 31-35-2-8(a).

A. Threat to the Well-Being of Children

[18] Father challenges the juvenile court's determination that there is a reasonable probability that continuation of the parent-child relationship is a threat to the well-being of the Children. To begin, we note that Father does not specifically challenge any of the juvenile court's findings and we therefore accept the

numerous findings supporting this conclusion as true. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[19] In determining whether the parent-child relationship poses a threat to a child, a parent's habitual patterns of conduct can be considered indicative of a substantial probability of future harm. *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). Throughout the duration of the Children's case plan Father demonstrated irrational behavior and thinking which resulted in poor decision making, made unsubstantiated accusations against those trying to help Father achieve reunification, was unstable, and failed to be accountable for his actions. As a result, Father was diagnosed with a personality disorder and ordered to complete cognitive behavioral treatment focused on decision making and addressing his irrational beliefs and patterns of behavior that affected his general functioning. However, Father never properly addressed his mental health issues. He was unsuccessfully discharged from home services which included his cognitive behavioral treatment, grew increasingly hostile towards DCS resulting in multiple service discharges, and never completed a second psychological evaluation after he began to disengage from the Children's case plan in November 2019. *See In re S.L.H.S.*, 885 N.E.2d at 617 (reasoning, in part, that a father's failure to participate in court-ordered services directed at his mental health issues supported the conclusion that the parent-child relationship poses a threat to the well-being of his child). Father's repeated failure to address his mental health and correct his concerning behaviors supports the

juvenile court's determination that his continued relationship with the Children poses a threat to their well-being.

[20] Additionally, in June 2019, Dr. Amador cautioned that if Father could not successfully address his mental health issues, the well-being of the Children and their ability to “develop normally and develop healthy emotional functioning” could be harmed. Tr., Vol. 2 at 48. Unfortunately, since Dr. Amador's evaluation of Father, the Children regularly expressed maladaptive responses to spending time with him. For instance, O.B., nearly fully potty trained, reverted to relying solely on diapers. Additionally, both of the Children struggled to participate in any type of routine, and would throw tantrums, fight, cry, and soil themselves after consistently visiting with Father. The record need not show that remaining in a parent's custody is wholly inadequate for a child's survival. *K.T.K.*, 989 N.E.2d at 1235. Rather, it is sufficient to show that the child's emotional and physical development are threatened by a parent's custody. *Id.* Here, CASA Gallagher indicated that Father is a threat to the Children's well-being and development. And CASA Gallagher's sentiment is evidenced by the Children's responses to visitations with Father. Further, it appears that Father's continued relationship would only result in further harm, particularly when considering that Children's maladaptive responses have subsequently dissipated now that visits with Father have stopped. Accordingly,

sufficient evidence exists to support the juvenile court's determination that a continued relationship with Father poses a threat to the Children's well-being.⁹

B. Best Interest of the Children

[21] Father also challenges the juvenile court's conclusion that termination is in the best interests of the Children. Deciding whether termination is in a child's best interest is perhaps the most difficult determination that a juvenile court must make. *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019), *cert. denied*, 140 S.Ct. 2835 (2020). In deciding to terminate the parent-child relationship, the juvenile court must look at the totality of the evidence and must subordinate the parents' interests to those of the child. *Id.* Central among these interests is a child's need for permanency. *Id.*

[22] Here, the Children were adjudicated CHINS in the spring of 2018. Initially, Father was engaged and progressed in the Children's case plan. However, in November 2019, just as his parenting time was significantly increasing, Father's behavior and participation completely unraveled. He began refusing visits, was discharged from multiple services, continued to make accusations against DCS, indicated that he would not work with DCS referred providers, and failed to

⁹ Father also argues that the juvenile court erred in finding there is a reasonable probability the conditions that resulted in the Children's removal from Parents' care or the reasons for continued placement outside the home will not be remedied. However, as noted above, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires only one element be proven to terminate a parent's parental rights. Having concluded sufficient evidence exists to show Father's continued relationship poses a threat to the well-being of the Children, we need not determine whether the reasons for the Children's removal or continued placement outside the home will be remedied.

address his mental health issues. Father's regression in behavior was so severe that DCS found it more and more difficult to find service providers willing to work with him. At the time of the fact-finding hearing Father was not participating in any services. His continued regression in the Children's case plan is evidence that Father is not capable of meeting the Children's need for permanency or stability and is evidence that termination is in the best interest of the Children. *See In re I.L.*, 177 N.E.3d 864, 875 (Ind. Ct. App. 2021) (indicating that a mother's participation in her child's case plan, characterized by periods of progression followed by regression, was not indicative of stability or permanency and supported a conclusion that termination was in the child's best interest).

[23] Additionally, testimony from the FCM and CASA has regularly been used to support a juvenile court's determination that termination is in a child's best interest. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*; *see also K.T.K.*, 989 N.E.2d at 1235-36. Here, FCMs Lafel and Steiner as well as CASA Gallagher testified that termination of Father's parental rights was in the best interest of the Children. Combined with Father's habitual conduct, the impact of Father's conduct on the Children, and as detailed above, Father's continued relationship with the Children posing a threat to their well-being, we cannot say the trial court erred in determining that termination was in the Children's best interest.

[24] Although Father argues that he recently engaged in therapy and began taking medication for depression and anxiety, these actions were not taken until after

DCS filed to involuntarily terminate Father's parental rights. The time to take corrective action is early in the CHINS proceedings, *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007), and that time has since passed. Additionally, efforts made right before termination may be disregarded in light of prior conduct. *K.T.K.*, 989 N.E.2d at 1234. Father has had three years to address, among other things, his mental health issues and has failed to do so. His recent efforts are unpersuasive.

[25] Therefore, we agree with the juvenile court that DCS established by clear and convincing evidence that termination was in the Children's best interest.

Conclusion

[26] We conclude that sufficient evidence showed that Father's continued relationship with the Children poses a threat to their well-being and that termination of parental rights is in the Children's best interest. Therefore, we conclude the juvenile court's decision was not clearly erroneous, and we affirm.

[27] Affirmed.

Riley, J., and Molter, J., concur.