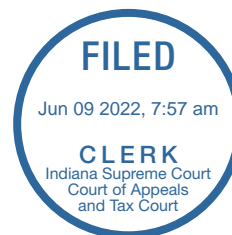


MEMORANDUM DECISION

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

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of Z.P. (Minor
Child) and

J.P. (Father) and S.W. (Mother),
Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

June 9, 2022

Court of Appeals Case No.
21A-JT-2804

Appeal from the Wayne Superior
Court

The Honorable Darrin M.
Dolehanty, Judge

Trial Court Cause No.
89D03-2107-JT-26

Crone, Judge.

Case Summary

- [1] J.P. (Father) and S.W. (Mother) (collectively the Parents) appeal the trial court's order involuntarily terminating their parental rights to their minor child Z.P. (Child). They argue that the trial court clearly erred in concluding that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside the home will not be remedied and that termination is in Child's best interests. Finding no error, we affirm.

Facts and Procedural History

- [2] The evidence in support of the judgment and the undisputed findings of fact follow.¹ On August 8, 2016, Child was born. On July 19, 2018, the Indiana Department of Child Services (DCS) filed a request with the trial court for approval of a program of informal adjustment to address the Parents' illegal drug use, which was granted. On March 19, 2019, the informal adjustment was successfully discharged.
- [3] A week later, on March 26, 2019, police responded to a report of an intoxicated driver at a Richmond fast-food drive-through. Police located the reported vehicle and found Mother in the driver's seat and Father and Child in the back seat. Mother and Father appeared to be impaired, and they were arrested. DCS took custody of Child because of the Parents' impaired condition and their

¹ Although Mother is a party to this appeal, the Parents' argument focuses solely on Father. Accordingly, we primarily recite the facts most relevant to the termination of Father's parental rights.

inability to provide care and supervision of Child. Family Case Manager (FCM) Michelle Irwin visited the Parents in jail, and Mother told her that she had been using Xanax and Suboxone on the day of the arrest. Father, who was then twenty-four years old, informed FCM Irwin that he had used Xanax that day and had been using the drug since he was fifteen.

[4] On March 28, 2019, DCS filed a petition alleging Child to be a child in need of services (CHINS). The Parents admitted that Child was a CHINS because of their drug use. On June 3, 2019, a dispositional order was issued requiring the Parents to contact their FCM weekly, complete a substance abuse assessment and all recommended services, stop using illicit drugs, submit to random drug screens, maintain safe and suitable housing, secure and maintain a stable source of income, and participate in home-based counseling.

[5] Initially, Father made noticeable efforts toward reunification. Although he had left Indiana sometime in May 2019 to live with his mother in Kentucky, when he returned to Indiana sometime prior to September, he found a job and an apartment, and he visited with Child five to six times a week. Father attended the initial substance abuse intake assessment, “but for some reason” never completed the actual assessment. Appealed Order at 3.

[6] In May 2020, FCM Katie Blankenship began working with the family. On May 26, Father and Mother both took drug screens, which were positive for cocaine and marijuana. FCM Blankenship “assured that reunification services were in place for both parents, including substance use assessments, opportunities for

inpatient and outpatient treatment, and case management services (to assist the parents with transportation, housing, and other issues).” *Id.* at 4. In July 2020, FCM Blankenship made another substance use assessment referral for Father, which he never completed. Mother did not participate in the inpatient treatment program that was recommended to her.

[7] On August 10, 2020, Father and Mother took drug screens. Father told FCM Blankenship that he had been using Xanax, and his screen was positive for benzodiazepines. Mother’s screen was positive for cocaine. On August 24, Father took a drug screen, which was positive for methamphetamine, cocaine, heroin, morphine, fentanyl and norfentanyl. *Id.* at 5. Father told FCM Blankenship that “he had messed up and was not doing well and not eating.” *Id.* Father was assigned a recovery coach, but he attended only five of the seventeen appointments with the coach.

[8] Father relocated to Kentucky from August 2020 through March 2021. *Id.* at 4. While in Kentucky, Father attempted to participate in a one-year inpatient substance abuse program at Chad’s Hope Adult and Teen Challenge, where his brother worked. Father started the program twice, staying a few days the first time and five days the second time, but he did not complete the program.

[9] In January 2021, Mother told FCM Blankenship that she was still using cocaine. From April through September, Mother failed to communicate with FCM Blankenship. In September, Mother admitted that she was still using

drugs. In July 2021, Mother’s parental rights to Child’s biological brother were terminated.

[10] From May through June or July 2021, Father participated in therapeutic visits with Child. “The visits were supposed to occur twice each week. Father attended these visits consistently at first, but his participation slipped off as time went on. When he showed up, Father was appropriate and engaged with Child, and the visits usually lasted around three hours each.” *Id.* at 6. After Father missed three consecutive scheduled visits, the visitation supervisor closed out the referral. On July 14, 2021, Father took a drug screen, which tested positive for THC. He told FCM Blankenship that he had not been using fentanyl but admitted to smoking marijuana.

[11] On July 30, 2021, DCS filed its verified petition for the involuntary termination of the parent-child relationship between the Parents and Child. On August 23, 2021, Father took another drug screen. He admitted to FCM Blankenship that it would be positive for fentanyl. The drug screen was positive for methamphetamine, fentanyl and norfentanyl. On August 28, Father informed FCM Blankenship that he was using fentanyl. He explained that he had left Indiana because “he was not able to stay sober here.” *Id.* at 6. FCM Blankenship ensured “that substance use services were in place for Father, but he did not participate.” *Id.*

[12] In September 2021, FCM Blankenship and Father reviewed his recent drug screens. Father said that he was “using and can’t stop” and that “he was

considering going to an inpatient facility in Kentucky.” *Id.* at 7. Later that month, he told FCM Blankenship that “he was at his grandmother’s home, that he planned to stay there, and that he did not need treatment.” *Id.*

[13] The trial court conducted termination hearings on September 30 and November 2. On November 16, the trial court issued its order terminating Father’s and Mother’s parental rights, which provides as follows:

48. As of the dates of this Termination of Parental Rights trial, Father is living in Kentucky. The only “visits” between Father and Child have taken place through a video platform. Because of Child’s limited attention span, the visits usually last ten (10) to fifteen (15) minutes.

49. During the periods of the CHINS case when Father was living in Indiana and FCM Blankenship was assigned, Father had the chance to participate in supervised visits with Child about twenty-five (25) times. He attended about fourteen (14). During the visits, FCM observed Father to be appropriate in his behavior, and observed that Child was not afraid of Father.

....

52. Therapist Joey Smith ... has worked with Child since April 2021. Therapist Smith sees Child once a week, and has noticed that Child struggles with emotional regulation and coping. Therapist Smith has also supervised three (3) video visits between Child and Father. The first visit went fine. Father did not show up for the second visit. Child struggled a lot during the third visit.

53. Rachel Farmer is a Home-Based Case Manager ... and has worked with Child since June 2020, providing home-based case

work and skills building services. She has observed Child to be “dysregulated”, angry, and hard on himself. Ms. Farmer has observed recent incontinence issues with child, including on October 21, 2021, when he had two (2) “accidents” in his pants.

54. The foster mother ... has noticed that Child’s behavior changes from his baseline after visits with his father. He gets wound up and hyper, talks back to the foster parents and has incontinence “accidents” in his pants. He has “meltdowns” after each visit session, and stays upset for a long time.

....

61. Karen Bowen is the Director of the Wayne/Union County CASA office and has been involved with this family’s CHINS case since 2019.

....

65. Director Bowen has formed the opinion that it is in the best interest of Child for parental rights to be terminated so that he can be adopted by the foster family, and remain in a family unit with his brother.

Based upon these findings, the Court concludes as follows:

....

B. The DCS has shown, by clear and convincing evidence, that there is a reasonable probability that the conditions that resulted in Child’s removal from his parents’ care, and his placement outside of their home, will not be remedied. The child was originally removed from his parents because their substance use

impaired them to the point that they were arrested and unable to provide proper care and supervision for him.

i. Specific to Mother:

Since the child's removal in March 2019, the child's mother has continued to use illegal drugs, and has chosen to not participate in the services offered to help her overcome that issue. In the one and one-half (1½) years that Child has been placed with the foster family, Mother has visited with him four (4) times. The most recent visit between Mother and Child was nine (9) months prior to this Termination of Parental Rights trial.

ii. Specific to Father:

Since the child's removal in March 2019, the child's father has similarly continued to use illegal drugs, and has physically distanced himself from his child, by moving hours away, to Kentucky.

....

C. The DCS has clearly and convincingly proven that termination of parental rights is in this child's best interest. As described in (B) above, the parents have essentially abandoned this child. Since Child was removed [from] his parents, Mother has visited with him only four (4) times, and has not seen him at all in the last nine (9) months. Father has moved to Kentucky, and only communicates with Child through occasional, brief video sessions. Following these video "visits", the child displays extreme behavior changes and soils himself. Both parents continue to abuse illegal drugs. Neither parent is making a reasonable attempt to parent this child.

.... As an advocate for the child’s best interests, the CASA’s observations have led her to the conclusion that parental rights should be terminated and the child should be adopted by the foster parents.

D. The DCS has shown, by clear and convincing evidence, that there is a satisfactory plan for the child’s care and treatment should parental rights be terminated, that plan being adoption. As noted above, the child is already placed with foster parents who are willing and able to adopt him. Adoption by the foster parents would also keep this child in a home with his brother.

Appealed Order at 7-10. This appeal ensued.

Discussion and Decision

[14] The Parents seek reversal of the termination of their parental rights. We recognize that “a parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (quoting *Bester v. Lake Cnty. Office of Family & Child.*, 839 N.E.2d 143, 147 (Ind. 2005)). “[A]lthough 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). Involuntary termination of parental rights is the most extreme sanction, and therefore “termination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.*

[15] “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).

In considering whether the termination of parental rights is appropriate, we do not reweigh the evidence or judge witness credibility. We consider only the evidence and any reasonable inferences therefrom that support the judgment, and give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. Where a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court’s findings or judgment unless clearly erroneous. [Ind. Trial Rule 52(A)]. In evaluating whether the trial court’s decision to terminate parental rights 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.

K.T.K. v. Ind. Dep’t of Child Servs., 989 N.E.2d 1225, 1229-30 (Ind. 2013) (citations and quotation marks omitted). The Parents challenge only one of the trial court’s findings. When findings of fact are unchallenged, this Court accepts them as true. *In re S.S.*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). As such, if the unchallenged findings clearly and convincingly support the judgment, we will affirm. *Kitchell v. Franklin*, 26 N.E.3d 1050, 1059 (Ind. Ct. App. 2015), *trans. denied*.

[16] A petition to terminate a parent-child relationship must allege, among other things:

(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 each element by “clear and convincing evidence.” *R.S.*, 56 N.E.3d at 629; Ind. Code § 31-37-14-2. If the trial court finds that the allegations in the petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[17] The Parents assert that the trial court's finding that Child was essentially abandoned is unsupported by the facts and that the trial court's “failure to acknowledge additional facts erroneously led the trial court to the conclusions that: the reasons for original removal had not been remedied and that the best interests of the child were served by terminating the parent child relationship.” Appellants' Br. at 10. The Parents' contention regarding the trial court's failure to acknowledge additional facts ignores our standard of review, which requires

us to consider whether the findings support the trial court's conclusions. Given that the Parents have challenged only the finding that they have essentially abandoned Child, we will accept the remaining findings as true and will affirm if the unchallenged findings clearly and convincingly support the trial court's conclusions. *See Kitchell*, 26 N.E.3d at 1059.

[18] Furthermore, we note that the Parents' argument focuses solely on the findings specific to Father. Accordingly, any claim that the trial court clearly erred in terminating Mother's parental rights is waived for failing to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal); *Castro v. State Off. of Fam. & Child.*, 842 N.E.2d 367, 373 n.2 (Ind. Ct. App. 2006) (failure to present cogent argument to support claim that trial court erred in finding that there was a satisfactory plan for care and treatment of child waives issue for appellate review), *trans. denied*.

[19] We first turn to whether the trial court's findings support its determination that there is a reasonable probability that the conditions that led to Child's removal and continued placement outside the home will not be remedied. In addressing this issue, we engage in a two-step analysis. *K.T.K.*, 989 N.E.2d at 1231. First, "we must ascertain what conditions led to their placement and retention in foster care." *Id.* Second, "we 'determine whether there is a reasonable probability that those conditions will not be remedied.'" *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must

judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions, and balancing a parent's recent improvements against "habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* "Where there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In addition, a trial court may consider services offered by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. DCS "is not required to provide evidence ruling out all possibilities of change; rather, it need only establish 'that there is a reasonable probability that the parent's behavior will not change.'" *Id.* (quoting *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007)).

[20] Here, in March 2019, Child was initially removed from the home and remained outside the Parent's care because their drug use impaired them to the point that they were arrested and unable to provide proper care and supervision for him. Father left Indiana to live in Kentucky but when he returned he engaged in an initial substance abuse intake assessment, but for some reason did not complete the actual assessment. In May 2020, he tested positive for cocaine. In August 2020, he tested positive for methamphetamine, cocaine, heroin, morphine, fentanyl, and norfentanyl. After a recovery coach was assigned, Father went to only five of the seventeen scheduled sessions.

[21] A year later, Father’s drug use was still a serious problem. In August 2021, Father testified positive for methamphetamine, fentanyl, and norfentanyl. Services were in place for Father, but he told FCM Blankenship that he could not stay sober here and returned to Kentucky. In September 2021, Father told FCM Blankenship that he was “using and can’t stop” and that he wanted to go to an inpatient facility. Appealed Order at 7. However, later that month, he informed her that he planned to stay in Kentucky and that he did not need substance abuse treatment. Father has continued to use drugs and has not engaged in services to address his substance abuse. We have little difficulty agreeing with the trial court that there is a reasonable probability that Father’s substance abuse and inability to parent Child will not be remedied.

[22] As for Child’s best interests, we note that to determine whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. “[C]hildren cannot wait indefinitely for their parent to work toward preservation or reunification—and courts ‘need not wait until a child is irreversibly harmed such that the child’s physical, mental, and social development is permanently impaired before terminating the parent-child relationship.’” *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1235). Also, “[p]ermanency is a central consideration in determining the best interests of a child.” *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009).

[23] During the periods of the CHINS case when Father was living in Indiana and FCM Blankenship was assigned, Father attended fourteen of twenty-five scheduled supervised visits with Child. In June or July 2021, Father missed

three consecutive visits with Child, and the visitation supervisor closed out the referral. Now, Father has moved to Kentucky and communicates with Child through video session. His visits with Child have become emotionally traumatic for Child. Child was two years old when he was removed from the Parents, and he is now five years old. His foster parents have provided for all his needs since April 2020. Furthermore, FCM Blankenship and CASA Karen Bowen each testified that adoption was in Child's best interests. Tr. Vol. 2 at 135, 149-50. The FCM's and the CASA's testimony in support of termination, combined with the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Child's removal from or reasons for placement outside the home will not be remedied, is sufficient to support the trial court's conclusion that termination is in Child's best interests. *See A.D.S.*, 987 N.E.2d at 1158-59; *see also A.I.*, 825 N.E.2d at 811 (concluding that CASA's and case manager's testimony, coupled with evidence that conditions resulting in continued placement outside of home will not be remedied, was sufficient to prove by clear and convincing evidence that termination was in child's best interests). We affirm the trial court's termination order.

[24] Affirmed.

Vaidik, J., and Altice, J., concur.