

## 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 re the Termination of the  
Parent-Child Relationship of:  
Z.H. (Minor Child) and J.H.  
(Father)

J.H. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

April 5, 2022

Court of Appeals Case No.  
21A-JT-2250

Appeal from the  
Montgomery Superior Court

The Honorable  
Heather L. Barajas, Judge

Trial Court Cause No.  
54D01-2004-JT-114

**Vaidik, Judge.**

# Case Summary

- [1] J.H. (“Father”) appeals the termination of his parental rights to his son. We affirm.

## Facts and Procedural History

- [2] F.B. (“Mother”) and Father are the biological parents of Z.H. (“Child”), who was born in January 2019.<sup>1</sup> Less than two weeks after Child’s birth, the Indiana Department of Child Services (DCS) filed a petition alleging Child was a child in need of services (CHINS) because Mother, age nineteen, could not properly care for and feed Child and Father, age twenty-two, did not have stable housing. Child was removed from Mother and Father (and has never been returned to their care).
- [3] At the March 2019 fact-finding hearing, the trial court found Child was a CHINS. At the April dispositional hearing, the trial ordered Father to, among other things, obey the law and not use illegal drugs, maintain safe and suitable housing, participate in home-based services, and attend scheduled visits with Child.
- [4] At first, Father participated in services and visited Child (although he didn’t have stable housing). *See* Tr. p. 152. But things changed in the fall of 2019.

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<sup>1</sup> After the termination hearing, Mother consented to the adoption of Child. As a result, we focus on the facts relevant to Father.

Father started using methamphetamine, marijuana, and pills and stopped participating in services and visiting Child. As a result of the missed visits, Father was discharged from visitation services in October. In December, Father was charged with Level 6 felony theft of a firearm. Two months later, in February 2020, Father was charged with Level 5 felony battery on a pregnant woman (and has been incarcerated ever since). Father later pled guilty to both charges and was sentenced to consecutive terms of 190 days for the Level 6 felony and three-and-a-half years for the Level 5 felony.

- [5] DCS petitioned to terminate Father’s parental rights to Child in April 2020. Two months later, DCS stopped providing services to Father. Since Father was incarcerated, Father and DCS didn’t think video visits with Child were appropriate. *See id.* at 183. A fact-finding hearing was held over three days in July 2020, January 2021, and March 2021. Father, who was still incarcerated, testified his earliest release date was January 2023.<sup>2</sup> Father also testified he never obtained stable housing and stopped participating in services and visiting Child because he started using drugs. When asked whether his parental rights should be terminated, Father responded that what he wanted didn’t matter; rather, it was “about what’s best for [Child].” *Id.* at 42. When then asked if he thought termination is in the best interests of Child, Father responded, “I don’t think I’m going to answer directly. What I’m going to say instead is that there’s

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<sup>2</sup> According to the Indiana Department of Corrections’ website, Father’s earliest release date is now August 2023.

nothing I can do for [Child] in my current position.” *Id.* (cleaned up). Father explained that after he is released from prison and gets his feet on the ground, he “would be more than interested in developing and maintaining a healthy relationship with” Child. *Id.* at 43.

[6] Family Case Manager (FCM) Jessica Alesi testified Child had been in the same foster home since August 2019 and that the family wanted to adopt him. She believed termination is in the best interests of Child. Court Appointed Special Advocate (CASA) Beth Griffin testified termination is in the best interests of Child because he was in a stable home.

[7] In September 2021, the trial court issued an order terminating Father’s parental rights to Child.

[8] Father now appeals.

## Discussion and Decision

[9] Father contends DCS did not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When 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. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether

the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[10] A petition to terminate parental rights 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 the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

[11] Father first challenges the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal or the reasons for

placement outside the home will not be remedied.<sup>3</sup> In making this determination, the trial court engages in a two-step analysis. First, the court must determine what conditions led to the child’s placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The court must judge the parent’s fitness to care for his child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[12] Child was removed from Father because he did not have stable housing. As services were offered to Father and his housing situation did not improve, other issues arose. Father started using drugs, and he stopped participating in services and visiting Child. Father also stole a firearm and committed battery on a pregnant woman. *See In re K.T.*, 137 N.E.3d 317, 327 (Ind. Ct. App. 2019) (“A trial court may consider conditions that emerge subsequent to initial removal and that would justify continued removal.”). Father argues that had DCS continued providing services to him, he “could have” provided stable housing for Child. Appellant’s Br. p. 14. However, this argument fails to recognize that Father has been incarcerated since February 2020 and won’t be released from

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<sup>3</sup> Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements. Here, the trial court found two elements: (1) there is a reasonable probability the conditions resulting in Child’s removal or the reasons for placement outside the home will not be remedied and (2) there is a reasonable probability the continuance of the parent-child relationship poses a threat to the well-being of Child. Father does not challenge the trial court’s second conclusion. Although we could affirm on this basis, we address Father’s argument regarding the first conclusion.

prison until sometime in 2023. The evidence supports the trial court's conclusion there is a reasonable probability the conditions resulting in Child's removal or the reasons for placement outside the home will not be remedied.

[13] Father next challenges the trial court's conclusion termination is in the best interests of Child. This is "[p]erhaps the most difficult determination" a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). The court must look at the totality of the evidence and subordinate the parent's interests to those of the child. *Id.* Central among these interests is the child's need for permanency. *Id.* In addition, a recommendation to terminate parental rights by both the case manager and child advocate, together with evidence the conditions resulting in removal or the reasons for placement outside the home will not be remedied, is enough to show by clear and convincing evidence that termination is in the child's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied.*

[14] Both FCM Alesi and CASA Griffin testified termination is in the best interests of Child because he is in a stable home. Father acknowledges their testimony but notes Child has had speech and behavioral issues and he hasn't had time to "mold" Child. Appellant's Br. p. 14. But as explained above, Father had visits with Child—and thus had time to "mold" him—yet he chose to miss them. Father then committed two crimes and became incarcerated, making visits with Child unfeasible. Although Father expressed an interest in parenting Child after he is released from prison and gets his feet on the ground, the trial court was not

required to wait any longer. *See Ma.H.*, 134 N.E.3d at 49 (“[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” (quotation omitted)). The evidence supports the trial court’s conclusion termination is in the best interests of Child.

[15] Affirmed.

Najam, J., and Weissmann, J., concur.