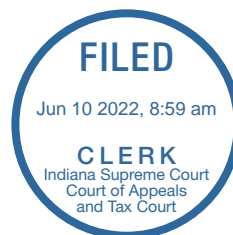


MEMORANDUM DECISION

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 S.P. and R.P.
(Minor Children)

and

A.E. (Mother) and C.P. (Father),
Appellant-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

June 10, 2022

Court of Appeals Case No.
22A-JT-170

Appeal from the Owen Circuit
Court

The Honorable Kelsey Hanlon,
Judge

Trial Court Cause No.
60C02-2106-JT-105 and 60C02-
2106-JT-106

Mathias, Judge.

[1] A.E. (“Mother”) and C.P. (“Father”) appeal the Owen Circuit Court’s orders terminating their parental rights to their children. Both Parents argue that the trial court’s orders terminating their parental rights are not supported by clear and convincing evidence. We disagree and affirm the trial court’s orders.

[2] Affirmed.

Facts and Procedural History

[3] Mother and Father (collectively “Parents”), who are not married, have two children: S.E.-P. born in April 2018 and R.E.-P. born in July 2019. Both children tested positive for THC at birth. After R.E.-P.’s birth, DCS and Parents entered into an Informal Adjustment, and Parents agreed to participate in homebased services.

[4] In December 2019, Department of Child Services received a report expressing concerns about Mother’s mental health and the safety of Parents’ home. On January 2, 2020, the children were removed from Parents’ care because Parents failed to participate in services offered through the Informal Adjustment, they tested positive for methamphetamine, they lied about the family’s whereabouts, their home was unsanitary, and they were struggling with mental health issues. Shortly thereafter, DCS filed a petition alleging that S.E.-P. and R.E.-P. were Children In Need of Services (“CHINS”).

- [5] On February 24, 2020, the trial court held a fact-finding hearing. In addition to the safety concerns listed above, DCS presented evidence of domestic violence in Parents' home. The trial court adjudicated the children as CHINS because Parents were unable to provide supervision for them due to the family's "unaddressed issues with substance abuse, mental health, domestic violence, and issues providing adequate supplies and safe home conditions for the Children." Mother's App. pp. 32, 43. The children were placed in the care of their paternal great-aunt and uncle.
- [6] On May 18, the trial court issued its dispositional order and ordered Parents to complete drug testing, substance abuse and mental health assessments and recommendations arising therefrom, participate in homebased counseling and individual therapy, participate in visitation with the children, secure suitable housing and sources of income, and participate in domestic violence services.
- [7] In August and September 2020, Mother participated in an in-depth psychological evaluation.¹ Mother has an extensive history of childhood trauma. She was physically abused by both of her parents and witnessed domestic violence against her mother. Mother was diagnosed with Adult Attention Deficit Hyperactivity Disorder and Personality Disorder with Dependent and Histrionic Features. She received a secondary diagnosis of

¹ In her brief, Mother challenges the trial court's characterization of the evaluation as "in-depth." Dr. Jim Dalton conducted the assessment which included significant testing of Mother and her clinical interview. He issued a thorough report discussing Mother's testing results and mental health diagnoses. And the trial court's description of the evaluation as "in-depth" was not clearly erroneous.

Other Stress-Related Disorder, Resolving, and a tertiary diagnosis of Learning Disorder. Mother's diagnoses are "characterized by being overly dependent on/influenced by others, and difficulty with decision making concerning relationships." *Id.* at 34, 45. Therefore, Mother is more vulnerable to abusive relationships. Mother maintained abusive relationships for lengthy periods during the CHINS proceedings. Mother's diagnoses also affected her day-to-day functioning. The assessment recommended non-addictive medication for treatment of ADHD, therapy, case management, and skill building to assist Mother with safe decision making. Mother also has issues with learning and memory. Mother needs to address her substance abuse issues before her other diagnoses can be adequately addressed. "Mother continues to test positive for THC and endorsed THC and alcohol use as a form of self-medication during the" CHINS proceedings. *Id.* at 35, 46. Mother tested positive for THC on August 30, 2021.

[8] Mother attended individual therapy throughout the proceedings but failed to make progress. Mother feels overwhelmed by anxiety and PTSD. Mother continues to exhibit codependent tendencies. Mother did not consistently participate in medication management for treatment of her mental health diagnoses and is not taking medication to treat her severe ADHD.

[9] Mother's lack of coping skills was evident during supervised parenting time. During visits, Mother was overly emotional, unable to multi-task, and was easily overwhelmed. Mother often cried during visitations and S.E.-P. tried to comfort her. Mother cannot safely and independently care for the children.

- [10] Father participated in an in-depth psychological evaluation in January and February 2021, which resulted in a primary diagnosis of Borderline Personality Disorder and secondary diagnoses of Bipolar I Disorder, Post-Traumatic Stress Disorder, and Substance Abuse Disorder. Without treatment, Father's mental health disorders can result in strained relationships, intimate partner violence, and difficulty maintaining employment. Father's history of abuse in his own childhood contributed to his diagnoses. The assessment recommended medication management and therapeutic services. However, Father's mental health diagnoses could not be adequately addressed until he ceased use of illicit substances.
- [11] Father struggles with his mental health and anxiety. He uses THC to self-medicate during periods of extreme anxiety. Father attended therapy but averaged only one session per month. Father should have attended therapy on a weekly or bi-weekly basis. Father did not make progress in therapy initially. However, Father's therapist reported that he made progress in the months leading up to the termination fact-finding hearings. Despite his progress, Father made suicidal statements in a family team meeting in August 2021. And Father told a service provider that he would take his own life if his parental rights were terminated while he was at the courthouse for the fact-finding hearing.
- [12] Father continued to test positive for methamphetamine throughout these proceedings. And after testing positive for methamphetamine on August 31, 2021, Father missed three requested drug screens the following month. Father acknowledges his substance abuse issues but has not attempted to address them.

- [13] Father participates in supervised visitation with the children at his grandmother's home. The visits generally go well and his interactions with the children are positive. Father and the children share a bond. However, Father's continued drug use and health concerns prevented Father from progressing to a less restrictive visitation scheme.
- [14] Due to Parents lack of progress, particularly in addressing their mental health and substance abuse issues, DCS filed petitions to terminate their parental rights to the children on June 8, 2021. The trial court held bifurcated fact-finding hearings on August 23 and October 5, 2021.
- [15] On January 5, 2022, the trial court issued its orders terminating Mother's and Father's parental rights to the children.² The trial court found that Parents "have struggled to make sustained progress with mental health services. Respondent Parents continue to have serious mental health challenges that impact their ability to care for themselves and for the Children." *Id.* at 37, 48. Parents have also failed to obtain sobriety and have not participated in drug testing as ordered. Neither Parent progressed beyond supervised visitation with the children and both failed to address the safety concerns that led to the children's removal. Finally, both Parents lack stable housing. On the date of the fact-finding hearings, Father lived with his grandmother but he had also lived with other relatives throughout these proceedings, including his mother who

² The trial court issued separate orders for each child.

also uses methamphetamine. Mother lived with her mother and stepfather for a year but told service providers that the children could not live in their home because the “environment is toxic.” *Id.* at 38, 49. Mother is on a waiting listing for subsidized housing.

[16] The trial court concluded that DCS presented clear and convincing evidence to prove the statutory factors enumerated in [Indiana Code 31-35-2-4\(b\)](#) and terminated Mother’s and Father’s parental rights. Mother and Father each filed a notice of appeal, and their appeals were consolidated by order of our court on April 1, 2022.

Standard of Review

[17] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* 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.*

[18] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings;

and second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. Finally, we will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[19] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code § 31-35-2-4(b)(2) (2021)*. Only two of those elements are at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the children’s removal or the reasons for placement outside the home will not be remedied, and 2) whether termination of parental rights was in the children’s best interests.³ *I.C. § 31-35-2-4(b)(2)(B)(i) & (C)*.

³ DCS must only prove one of the elements listed in *Indiana Code subsection 31-35-2-4(b)(2)(B)*, and neither parent challenged the trial court’s conclusion under the “threat” prong. Therefore, the Parents have waived their argument that DCS failed to prove the required factors enumerated in subsection *31-35-2-4(b)(2)(B)*. *See A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 n.4 (Ind. Ct. App. 2013). Given the constitutional issues at stake in the right to raise one’s own children, we elect to consider Parents’ arguments that DCS failed to prove that the reasons the children were removed from Parents’ care have not been remedied.

[20] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

A. Mother's Arguments

[21] Mother argues that clear and convincing evidence does not support the trial court's conclusion that the reasons for the children's removal from her care had not been remedied. Mother claims she presented evidence that she was no longer using marijuana, her marijuana use did not affect her parenting, she had stable employment,⁴ was on a waitlist for subsidized housing, and was addressing her mental health issues.

[22] Mother relies on her own testimony to support her claim that she was no longer using marijuana, and the trial court was not required to credit that testimony, particularly in light of Mother's positive THC test between the dates of the bifurcated hearings. DCS presented evidence that Mother's marijuana use could cause impairment, which would impact her ability to parent the children especially given their young ages.

⁴ Mother presented uncontested evidence that she has stable employment. And we commend Mother for achieving that goal.

- [23] Importantly, Mother's use of marijuana to cope with her mental health issues impedes Mother's progress in treating her mental health. Mother struggled with her mental health and her severe ADHD throughout these proceedings. Mother did not make significant progress in her mental health treatment. And her lack of coping skills is evident during supervised parenting time. During visits, Mother was overly emotional, unable to multi-task, and easily overwhelmed. Mother would often cry during visits and her three-year-old child would attempt to comfort her. Mother's marijuana use is not a "sufficient or a productive way to deal with her mental health issues." Tr. Vol. 2, p. 59.
- [24] Due to safety concerns for the children during Mother's supervised visitations at maternal grandmother's home, Mother's visitation supervisor moved the visits to her office. *Id.* at 95-96. Mother's progress toward addressing the children's nutritional needs and discipline was inconsistent. *Id.* at 96. Mother failed to change the children's diapers when necessary during visitations. *Id.*
- [25] Throughout these proceedings, Mother was not able to establish a safe home for her children. She still lived with her mother and stepfather, who abused her in her childhood, and had described their home as a toxic environment. Mother presented evidence at the fact-finding hearing that it was likely that she would receive subsidized housing. But Mother could not demonstrate that she is able to independently provide a safe, sanitary home for her children.
- [26] In sum, Mother failed to make progress in treating her mental health issues, substance abuse issues, and ability to provide a safe home for her children,

which were the reasons they were removed from her care. For all of these reasons, we conclude that clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside of Mother's home will not be remedied.

B. Father's Arguments

[27] Like Mother, Father argues that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside the home will not be remedied.⁵ Father claims that he has addressed his mental health issues and is progressing in therapy. He argues his only barrier to reunification with his children is his substance abuse, but he is "amenable to treatment and continues to work on this issue." Father's Br. at 15. Finally, Father argues that he has stable housing and employment.

[28] DCS presented evidence that Father failed to consistently participate in therapy throughout the CHINS proceedings and only progressed in therapy in the three months prior to the fact-finding hearing. Despite his progress, Father made

⁵ Father argues that there is no evidence in the record to establish the reasons the children were removed from his care because the trial court's judicial notice of the CHINS proceedings was inadequate. But [Indiana Evidence Rule 201\(b\)\(5\)](#) allows a court to judicially notice the existence of "records of a court of this state." See also *In re D.K.*, 968 N.E.2d 792, 796-97 (Ind. Ct. App. 2012) (upholding the trial court's judicial notice of the records of a related CHINS proceeding at the outset of a hearing to terminate parental rights). Therefore, the court did not err when it took judicial notice of its orders adjudicating the children as CHINS and the dispositional order in those proceedings.

suicidal statements to DCS service providers shortly before the termination fact-finding hearings. Tr. Vol. 2 pp. 51, 93, 125. And Father's therapist was unsure when Father might be able to meet his treatment goals. *Id.* at 79-80. And Father's ability to address his mental health is impaired by his continued substance abuse.

[29] Father failed to address his substance abuse issues and used methamphetamine throughout these proceedings. Father tested positive for methamphetamine between the dates of the bifurcated fact-finding hearings and failed to submit to drug testing in that same time period. Father acknowledges that he still needs to address his substance abuse issues.

[30] Father lived at several addresses during these proceedings including at his mother's home. Father struggled with substance abuse while living with his mother because she also uses methamphetamine. *Id.* at 50. On the dates of the fact-finding hearings, Father resided with his grandmother. Father is self-employed as a landscaper.

[31] Father continues to struggle with substance abuse and mental health issues. Father did not address his substance abuse issues during these proceedings and made the poor choice to reside with his mother who also uses methamphetamine. In the two to three months leading up to the fact-finding hearings, Father made some progress in therapy but still faces significant mental health struggles. For all of these reasons, we conclude that clear and convincing evidence supports the trial court's conclusion that there is a reasonable

probability that the conditions that resulted in the children's removal or the reasons for placement outside of Father's home will not be remedied.

II. Clear and convincing evidence supports the trial court's finding that termination of Father's parental rights is in children's best interests.

[32] Next, we turn to Father's argument that DCS did not prove that termination of his parental rights was in the children's best interests.⁶ A court's consideration of whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648.

[33] Father argues that none of DCS's witnesses testified that it was in his children's best interests to terminate his parental rights. Father observes that he has a good relationship with his children and they share a strong bond. Finally, Father

⁶ Mother does not challenge the trial court's conclusion that termination of her parental rights was in the children's best interests.

argues that his need for additional time to address his substance abuse issues is not a compelling reason to terminate his parental rights.

[34] Our court has often observed that “[a] parent’s historical inability to provide adequate housing, stability and supervision coupled with a current inability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interests.” *See, e.g., In re A.K.*, 924 N.E.2d 212, 221 (quoting *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006)), *trans. denied*. “In other words, ‘although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meeting their responsibility as parents.’” *Castro*, 842 N.E.2d at 221 (quoting *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004)).

[35] Throughout these proceedings, Father failed to make significant progress to address his mental health and substance abuse issues. We are sympathetic to Father’s plea for additional time to continue to work on those issues given the bond that Father and children share. But Father failed for nearly eighteen months to make any progress in addressing his mental health and he continues to use methamphetamine. Although DCS service providers did not specifically testify that termination of Father’s parental rights was in the children’s best interests, at the permanency hearing preceding the fact-finding hearing, the family case manager supported DCS’s plan to terminate Father’s parental rights and adoption of the children by their current placement. Tr. Vol. 2, p. 7. The case manager’s supervisor also recommended that the children be adopted

because Father had not made consistent progress in his ability to parent the children. *Id.* at 43-44. The children’s court appointed special advocate testified that the children needed a “permanent, stable situation.” Tr. Vol. 3, p. 15.

[36] For all of these reasons, we find that the trial court’s conclusion that termination of Father’s parental rights is in the children’s best interests is supported by clear and convincing evidence.

Conclusion

[37] The trial court’s orders terminating Mother’s and Father’s parental rights are supported by clear and convincing evidence.

[38] Affirmed.

Brown, J., and Molter, J., concur.