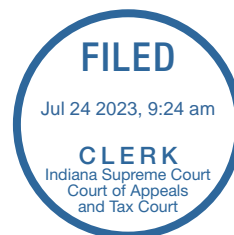


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination  
of the Parent-Child Relationship  
of: S.N. (Minor Child), and R.N.  
(Father),

*Appellant-Defendant,*

v.

Indiana Department of Child  
Services,

*Appellee-Plaintiff.*

July 24, 2023

Court of Appeals Case No.  
23A-JT-346

Appeal from the Scott Superior  
Court

The Honorable Marsha Owens  
Howser, Judge

Trial Court Cause No.  
72D01-2206-JT-30

**Memorandum Decision by Judge Brown**  
Judge Crone and Senior Judge Robb concur.

**Brown, Judge.**

- [1] R.N. (“Father”) appeals the involuntary termination of his parental rights with respect to his child, S.N. We affirm.

***Facts and Procedural History***

- [2] Father and C.N. (“Mother,” and together with Father, “Parents”) are the parents of S.N., who was born in June 2019. On September 4, 2019, the Department of Child Services (“DCS”) filed a verified petition alleging S.N. was a child in need of services (“CHINS”). DCS alleged that S.N. was born with significant medical challenges and exposed to Human Immunodeficiency Virus and Hepatitis C due to Mother’s diagnosis, she required placement of a nasogastric tube, and she was discharged from Riley Children’s Hospital on July 21, 2019. It asserted that a detailed discharge summary was provided to and signed by Parents and they failed to: take S.N. to her follow-up appointment; take her for her weekly blood draws; take her to an appointment on July 25, 2019; have an RNA viral lab completed; take her for her appointments on July 9, 2019, and July 30, 2019, at the Infectious Disease Clinic; and take her to her appointment at the Riley Infant Growth Clinic on August 30, 2019. DCS alleged that Mother removed S.N.’s nasogastric tube on August 10, 2019, without medical guidance. It alleged that S.N. was admitted to Riley Children’s Hospital on September 1, 2019, two days after S.N. was removed from the Parents, due to dehydration and feeding issues which could be correlated to the removal of the nasogastric tube. It also alleged that Father was incarcerated at the Scott County Jail on charges of domestic battery against Mother committed in the presence of a child less than sixteen years old.

- [3] In December 2019, the court held a hearing at which Parents admitted S.N. was a CHINS and the court adjudicated S.N. to be a CHINS. On February 7, 2020, the court entered a dispositional order finding Father had not maintained a meaningful role in S.N.'s life and ordering Parents to participate in services. In September 2020, Father was arrested in connection with a robbery.
- [4] On June 29, 2022, DCS filed a petition to terminate Parents' parental rights. On November 17, 2022, and January 12, 2023, the court held a factfinding hearing. DCS presented the testimony of multiple witnesses including Family Case Manager Kassandra Poellot ("FCM Poellot"), Family Case Manager Jervassio Smith ("FCM Smith"), and Court Appointed Special Advocate Allison Snyder ("CASA Snyder"). Father testified that he had been incarcerated since September 2020, he expected to be released in "the middle of next year, after I've received my . . . credit time," and that he had completed the Recovery While Incarcerated program. Transcript Volume II at 126. He testified that he had been compliant with services prior to his incarceration and there had been discussion with a caseworker about potentially doing a trial home visit with him but that did not occur due to his incarceration. He also testified that he believed he could raise S.N. after his release. On cross-examination, Father indicated that the dispositional order in the CHINS case ordered him to obey the law. With respect to his recent criminal offense, Father indicated that he was arrested for "[a]iding, causing, or inducing an offense, i.e. robbery," he pled guilty, "[a]nother individual that happened to be in [his] car, entered a building and committed a robbery, exited the building,

and then [they] left,” and he “had no idea that this was going to happen.” *Id.* at 131. He also indicated he may have approximately eighteen months of his sentence remaining after receiving credit time but acknowledged he could remain incarcerated until March 2026. When asked if he thought it was fair for S.N. to have to wait another year and a half to possibly three years for him to be released from prison, he answered: “Absolutely not.” *Id.* at 133.

- [5] On January 16, 2023, the court entered a thirteen-page order concluding that there was a reasonable probability that the reasons for removal from the home or continued placement outside the home will not be remedied, there was a reasonable probability that the continuation of the parent-child relationship posed a threat to S.N.’s well-being, and termination of parental rights was in S.N.’s best interests.

### ***Discussion***

- [6] Father challenges Findings 33, 34, 40, 44, 46, 47, and 49 and asserts that he did not decline an opportunity to have S.N. in his home for a trial visit, he fully participated in services during the time he was free from incarceration, there was no evidence that his “single criminal action and conviction represented ‘significant’ trouble obeying the law,” and he “did not concede a ‘mere possibility’ of future stability.” Appellant’s Brief at 16-17 (capitalization omitted). He contends that there was insufficient evidence to support the court’s conclusions that the reasons for removal were unlikely to be remedied, that continuation of the parent-child relationship was a threat to S.N., or that termination of the parent-child relationship was in S.N.’s best interests.

[7] In order to terminate a parent-child relationship, DCS is required to allege and prove, 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). If the court finds that the allegations in a petition described in Ind. Code § 31-35-2-4 are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[8] A finding in a proceeding to terminate parental rights must be based upon clear and convincing evidence. Ind. Code § 31-37-14-2. We do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and the reasonable inferences to be drawn from the evidence. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014). We confine our review to two steps: whether the evidence clearly and convincingly supports the

findings, and then whether the findings clearly and convincingly support the judgment. *Id.* We give due regard to the trial court’s opportunity to judge the credibility of the witnesses firsthand. *Id.* “Because a case that seems close on a ‘dry record’ may have been much more clear-cut in person, we must be careful not to substitute our judgment for the trial court when reviewing the sufficiency of the evidence.” *Id.* at 640.

[9] In determining whether the conditions that resulted in a child’s removal will not be remedied, we engage in a two-step analysis. *See id.* at 642-643. First, we identify the conditions that led to removal, and second, we determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* at 643. In the second step, the trial court must judge a parent’s fitness as of the time of the termination proceeding, taking into consideration evidence of changed conditions, balancing a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination. *Id.* Requiring trial courts to give due regard to changed conditions does not preclude them from finding that a parent’s past behavior is the best predictor of future behavior. *Id.* The statute does not simply focus on the initial basis for a child’s removal for purposes of determining whether a parent’s rights should be terminated, but also those bases resulting in the continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). A court may consider evidence of a parent’s

prior criminal history, drug abuse, history of neglect, failure to provide support, lack of adequate housing and employment, and the services offered by DCS and the parent's response to those services. *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. *Id.*

[10] To the extent Father does not challenge the court's findings of fact, the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the trial court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied.*

[11] The trial court found:

9. Child was removed from [Parents] on an emergency basis on August 30, 2019 due to allegations of abuse and/or neglect.

10. Neither Mother nor Father was taking Child to the necessary and required medical appointments and Mother had removed the child's feeding tube without the consent of a medical professional.

11. Father was also arrested and incarcerated for a domestic battery under cause number 72C01-1908-F6-000371 that was committed against Mother in the presence of the child.

\* \* \* \* \*

33. Both Mother and Father were presented at separate times with the opportunity to have the child return home on a Trial Home Visit.

34. However, neither parent took advantage of this opportunity.

\* \* \* \* \*

39. At the time in which Father was being evaluated for a Trial Home Visit with Child, Father engaged in the criminal activity for which he is currently incarcerated []. Due to Father's criminal involvement and subsequent incarceration, a Trial Home Visit with Father was never able to occur.

40. Father has had significant trouble obeying the law during the entirety of the CHINS case.

41. At the onset of the CHINS case in August of 2019, Father was arrested for charges of Domestic Battery Committed in the Presence of a Child Less Than 16 Years Old under cause number 72C01-1908-F6-000371. Child was present for the altercation that led to these charges.

42. Father was released in approximately February 2020 and placed on probation for this charge.

43. Father then committed an additional crime during the pendency of the CHINS case in September 2020, Aiding, Inducing or Causing an Offen[s]e (Robbery) under cause number 39C01-2009-F3-001114 to which he pled guilty.

44. Father has consistently failed to obey the law both when Child is in his care and when Child is not.

45. Father is currently serving a sentence for the above crime and will be incarcerated for another year and a half to (3) years.

46. Father testified he did not believe it was fair to the child to have to wait for him based on the mere possibility he would be able to achieve and maintain stability after the completion of his current sentence.

47. Although Father has been incarcerated for a large portion of the CHINS case, he has not been incarcerated for the entire CHINS case and has had ample time to engage in services and



make efforts to obtain and maintain a safe and stable environment for Child. However, he has been unable to do so.

48. At the time Father engaged in the criminal activity, Father was under the Dispositional Order to obey the law. Accordingly, Father has been non-compliant with the Dispositional Order in that way.

49. Father has been continuously unable to obey the law and as evidenced by his multiple cases, it is unlikely that Father will refrain from criminal activity in the future.

Appellant's Appendix Volume II at 97-102.

[12] The record reveals FCM Poellot testified that she was the family case manager between September 2019 and March 2021 and Father was aware that he was ordered not to commit crimes and DCS was looking to place S.N. back in his home and he still committed a criminal offense. She also indicated that Father was given the opportunity to have S.N. returned to his care for a trial home visit and that he did not take advantage of that opportunity. On cross-examination, she indicated that Father was compliant with services after he was released from Scott County Jail and began visitation in March 2020. However, she also testified that Father was later arrested for robbery and tested positive for methamphetamine at the jail. When asked if it was correct that Father did not have the ability to have a trial home visit because DCS did not place S.N. with him, she answered: "I know that [S.N.] was not placed there in that time. I cannot recall if there was a specific reason why or there was something else we were waiting on." Transcript Volume II at 32.

[13] FCM Smith testified that he was assigned as family case manager in April 2021 at which point Father was incarcerated. He testified that Father had an opportunity to engage in services, was under a dispositional decree to obey the law, and failed to do so. He also testified Father's anticipated release date was March 24, 2026. He stated that Father had been incarcerated throughout a large majority of the case for the crime he committed at the beginning of the case and that he was not able to provide for S.N. at that time because he was incarcerated. When asked if Father committed that crime "just when he was about to be looked at for a trial home visit," he answered affirmatively. *Id.* at 81. He also testified that Father had not remedied the conditions for S.N.'s removal and continued placement outside the home.

[14] In light of the unchallenged findings and the evidence set forth above and in the record, we cannot say the trial court clearly erred in finding a reasonable probability exists that the conditions resulting in S.N.'s removal and the reasons for placement outside Father's care will not be remedied.

[15] In determining the best interests of children, the trial court is required to look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The court must subordinate the interests of the parent to those of the children. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of a case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that

termination is in the children's best interests. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158-1159 (Ind. Ct. App. 2013), *trans. denied*.

[16] FCM Smith testified that termination of Father's parental relationship was in S.N.'s best interests, that S.N. was three years old, she had been out of the home since she was about two months old, and she had developed a bond with her current placement. When asked why he believed termination of parental rights was in S.N.'s best interests, he answered: "Both parents have been given opportunity to . . . take services, and remedy the involvement that led to DCS . . . and . . . they have been unable to do so." Transcript Volume II at 85. CASA Snyder testified she believed that termination of Parents' parental rights was in S.N.'s best interests. When asked why, she answered that none of the concerns from the beginning of the case, which had been opened since 2019, had been remedied and Father was still incarcerated and unable to care or provide for S.N., the events that led to his incarceration were a concern, S.N. was in a "happy, stable, loving home," and S.N. deserved permanency. *Id.* at 119.

[17] Based on the totality of the evidence, we conclude the trial court's determination that termination is in S.N.'s best interests is supported by clear and convincing evidence.

[18] For the foregoing reasons, we affirm the trial court.

[19] Affirmed.

Crone, J., and Robb, Sr.J., concur.