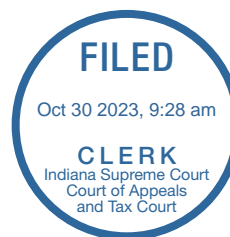


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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 Matter of the Involuntary
Termination of the Parent-Child
Relationship of:

D.S., K.S., and Ka.S. (Minor
Children)

and

M.S. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

October 30, 2023

Court of Appeals Case No.
23A-JT-1078

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause Nos.
72D01-2210-JT-60
72D01-2210-JT-61
72D01-2210-JT-62

Memorandum Decision by Judge Bailey
Judges May and Felix concur.

Bailey, Judge.

Case Summary

- [1] M.S. (“Father”) appeals the trial court’s order terminating his parental rights over his minor children: D.S., K.S., and Ka.S. (collectively, the “Children”).¹ Father raises one issue for our review, namely, whether the court erred when it terminated his parental rights. We affirm.

Facts and Procedural History

- [2] Father and E.A. (“Mother”) are from Micronesia and, while they appear to speak some English, they are not fluent. They have several children together, including: D.S., born June 28, 2012; K.S., born March 26, 2016; and Ka.S., born October 21, 2017.² On December 26, 2020, the Indiana Department of Child Services (“DCS”) received a call from the Scott County Sheriff’s Department asking for “immediate assistance.” Tr. at 39. DCS Family Case Manager (“FCM”) Melissa Buie responded to the call and went to the Sheriff’s office. Once there, FCM Buie was informed that Mother “had been driving

¹ The trial court also terminated the parental rights of the Children’s mother, but she does not participate in this appeal.

² Father and Mother have other children who are not part of these proceedings.

erratically,” that the Children had not been appropriately “secured” in the car, and that the Children were not “appropriately dressed.” *Id.* at 39-40.

[3] FCM Buie provided clothing to the Children, and the staff at the Sheriff’s Department provided the Children with food. Mother then “solicited” both FCM Buie and law enforcement officers in an attempt “to trade sexual favors for the items that were provided.” *Id.* at 40. While FCM Buie was at the Sheriff’s Department, Mother took K.S. into the restroom. When they exited, K.S.’s lip was “busted,” and she was bleeding. *Id.* FCM Buie asked Mother what had happened, and Mother responded that K.S. had done something that Mother “didn’t like.” *Id.* at 41. Mother then “made a motion with her hand, mimicking a smack.” *Id.* The Sheriff’s Department took Mother into custody, and the State charged her with battery.³

[4] At that time, Father was in Kentucky. FCM Buie contacted Father and spoke with Father and his family about what had happened with Mother and the Children. Because Mother was incarcerated and Father was not present, DCS removed the Children on an emergency basis and placed them in foster care. Father arrived in Scott County approximately twenty-four hours after DCS had called him. Thereafter, DCS offered Father an in-person visit with the Children, but he opted for a virtual visit because he was in the process of moving to Mississippi.

³ Mother ultimately pleaded guilty to the charge.

- [5] On October 27, DCS filed petitions alleging that the Children were Children in Need of Services (“CHINS”).⁴ Following a hearing, the court adjudicated the Children to be CHINS. Thereafter, the court entered a dispositional order and ordered Father to participate in services, including: contacting the FCM, keeping appointments with service providers, maintaining suitable housing, completing a parenting assessment, attending scheduled visitations with the Children, and providing the Children with a safe environment.
- [6] Father did not make any “efforts to complete any services to demonstrate his . . . dedication or parenting ability.” *Id.* at 85. Father also failed to “maintain[] consistent communication with the [C]hildren,” and he did not “engage[] with them.” *Id.* Accordingly, on October 26, 2022, DCS filed petitions to terminate Father’s parental rights as to the Children.
- [7] The trial court held a fact-finding hearing on DCS’s petitions. At the hearing, FCM Jessica Valois testified that Father had not “complied” with the case plan, “hadn’t completed any services to remedy the concerns for removal,” and had not made “any progress toward reunification for the [C]hildren.” *Id.* at 77. FCM Valois also testified that Father had not “engaged in any services throughout this case to enhance his parenting abilities” and that he would not “be able to adequately care for or protect” the Children. *Id.* at 83. She also testified that the termination of the parent-child relationship was in the

⁴ DCS filed separate petitions for each child, but the petitions were nearly identical. *See* Appellant’s App. Vol. 2 at 19, 130, 210.

Children’s “best interests.” *Id.* at 87. And she testified that DCS had a plan for the care and treatment of the Children, that being adoption. Similarly, the Children’s Court Appointed Special Advocate (“CASA”) testified that termination of the parent-child relationship and adoption were in the Children’s best interests. *See id.* at 132-33.

[8] Following the hearing, the court entered its findings of fact and conclusions thereon. In relevant part, the court found as follows:

22. Mother and Father were Court ordered to participate in various services including but not limited to, Home-Based Casework, Parenting Education, Random Drug Screens and Supervised Visitation.

23. Neither Mother nor Father was ever compliant with any court ordered service throughout the entirety of the underlying CHINS case.

* * *

29. Both parents continuously changed residencies [sic], frequently failing to inform DCS of their whereabouts.

30. Due to both parents’ lack of communication, DCS was unable to verify that either parent had stable or appropriate housing throughout the case.

31. DCS placed multiple referrals including, but not limited to, parenting assessments, home based casework, visitation. To accommodate the parent’s changing location, these services were offered virtually and/or in person. Additional services were also

provided in the state in which the parents reported they resided. Still, neither parent engaged.

32. Both parents were provided with counsel and interpretation services during the termination hearing as well as during the pendency of the CHINS case.

33. Additionally, DCS identified an interpreter to aid both parents in services during the CHINS case. However, neither parent ever engaged in services to take advantage of the interpreter.

34. Neither parent ever consistently visited with the [C]hild[ren]. Numerous visitation referrals were closed due to non-compliance.

* * *

36. Father has not visited with the [C]hild[ren] since approximately March 2022. Father was not consistently attending visitation prior to March 2022.

37. When Father did attend visitation, he did not meaningfully or appropriately engage with the [C]hild[ren].

38. Due to Mother and Father's continued noncompliance, the CHINS Court suspended services and visitation in the permanency order signed October 25, 2022.

39. Although DCS was no longer required to provide services to either parent, both Mother and Father were able to seek additional services on their own.

40. Mother and Father did not engage on their own in any services ordered under the Dispositional Decree.

* * *

47. [D.S.] disclosed she was sexually abused by various individuals while in the care of both parents. Both parents were reportedly aware of this abuse and failed to protect the [C]hild[ren].

48. Father has continuously allowed Mother and other inappropriate individuals to remain in a caretaking role despite knowing both of the [D.S.'s] sexual abuse disclosures and Mother's mental health issues which often cause her to continuously place children in dangerous and harmful situations.

49. Father has never engaged in any services to address these concerns and enhance his parenting skills.

50. Father is not a protective factor for Child[ren].

51. Father is unable to care for and protect the [C]hild[ren]. Father is not equipped to be in a caregiving role.

* * *

61. Termination of the parent-child relationship is in the Child[ren]'s best interest as . . . Father has been unable to maintain stability and has not enhanced his ability to parent or protect the child. Neither parent has engaged in services to remedy these issues, and neither parent is able to be a safe and stable caregiver for Child[ren].

62. [D.S.] is scared to be returned to her parents.

63. It is in Child[ren]'s best interests to be Adopted and that Adoption is a satisfactory plan as [C]hild[ren are] well-bonded to [their] current placement and sees them as family.

64. The [C]hild[ren]'s CASA testified that it is in the [C]hild[ren]'s best interest for parental rights to be terminated, and the Court finds CASA's testimony to be reliable and trustworthy and adopts CASA's testimony as findings of this Court.

65. Child[ren have] been out of the care and custody of either parent for a considerable amount of time, and the Child[ren are] well[-]adjusted and making significant improvements in [their] current foster home. It is in the [C]hild[ren]'s best interest to pursue Adoption.

66. Despite having over two (2) and a half years of time to engage in services, neither Mother nor Father have been able to achieve or maintain safety or stability during the pendency of the CHINS case.

67. Mother and Father are unable to provide safety, stability or permanency for Child[ren].

68. Mother and Father have been unable or unwilling to provide for the Child[ren]'s reasonable needs throughout the pendency of the CHINS case.

69. Child[ren] deserve[] permanency and establishing permanency by way of Adoption is in the Child[ren]'s best interests.

70. Returning Child[ren] to Mother and Father would harm Child[ren].

71. Child[ren]’s placement outside the care of Mother and Father has proven beneficial and Child[ren are] progressing well there.

Appellant’s App. Vol. 2 at 160-63.⁵

[9] Based on those findings, the court concluded that there is a reasonable probability that the conditions that resulted in the Children’s removal or continued placement outside of the home will not be remedied and that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the Children’s well-being. The court also concluded that the termination of Father’s parental rights was in the Children’s best interests and that DCS had a satisfactory plan for the care and treatment of the Children. Accordingly, the court terminated Father’s parental rights as to the Children. This appeal ensued.

Discussion and Decision

[10] Father challenges the trial court’s termination of his parental rights over the Children. We begin our review of this issue by acknowledging that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.”

⁵ The court issued separate orders for each Child, but each order contains nearly identical language.

Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.), 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. *Id.* Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[11] Before an involuntary termination of parental rights can occur in Indiana, 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. . . .

(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) (2023). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dept of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[12] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (In re D.D.)*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court’s unique position to assess the evidence, we will set aside the court’s judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[13] Here, in terminating Father’s parental rights, the trial court entered findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we apply a two-tiered standard of review. *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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[14] On appeal, Father does not challenge any of the factual findings made by the trial court. When findings of fact are unchallenged, this Court accepts them as true. *L.M. v. Ind Dep't of Child Servs. (In re S.S.)*, 120 N.E.3d 605, 608 n.2 (Ind. Ct. App. 2019). Further, Father concedes that he “cannot . . . in good faith argue that there was insufficient evidence to support the court’s conclusion” that the reasons for the Children’s removal and continued placement outside of his home will not be remedied. Appellant’s Br. at 12. And Father does not challenge the court’s conclusions that there is a reasonable probability that the continuation of the parent-child relationships will pose a threat to the Children’s well-being or that DCS has a satisfactory plan for the care and treatment of the Children. Rather, Father only challenges the court’s conclusion that termination of the parent-child relationship is in the Children’s best interests.

[15] In determining what is in a child’s best interests, a court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent’s historical inability to provide “adequate housing, stability, and supervision,” in addition to the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[16] When making its decision, the court must subordinate the interests of the parents to those of the child. See *Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). “The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship.”

Id. Moreover, this Court has previously held that recommendations of the family case manager and court-appointed special advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

[17] On appeal, Father contends that the court erred when it determined that the termination of the parent-child relationships was in the Children's best interests because he "demonstrated his love, affection, and desire to parent the Children," and because he "was living in a home with his sisters who were ready and willing to assist [him] in providing care for the Children." Appellant's Br. at 14. He also contends that the Children were well cared for in their current placement such that "continuation of the CHINS would have very little, if any[,] impact" on the Children's "immediate circumstances." *Id.*

[18] However, as the court's unchallenged findings demonstrate, Father has not shown that he is capable of parenting the Children. Father has had two and one-half years to participate in services and show that he can adequately provide for the care and safety of the Children. But despite numerous efforts by DCS, including offering both virtual services to accommodate Father's changing location and an interpreter to help with the language barrier, Father did not complete a single service. Indeed, FCM Valois testified that Father was not compliant "with any services" and that he did not "ever successfully complete any services." Tr. at 77. FCM Valois also testified that, because of

Father's noncompliance, DCS requested that both visitation and services "be stopped." *Id.*

[19] The Children need permanency. At the time of the termination hearing, the Children had been removed from Father's care for more than two years. FCM Valois testified that termination of the parent-child relationship was in the Children's best interests and that the Children were doing well in their current placement. Similarly, the Children's CASA testified that the Children were not getting the "necessary care" when they were with Father and that termination of Father's parental rights was in the Children's best interests. Tr. at 133. The court's unchallenged conclusion that the reasons for the Children's removal likely will not be remedied, coupled with the testimony of FCM Valois and the CASA, supports the court's determination that the termination of Father's parental rights was in the Children's best interests.

Conclusion

[20] The court's unchallenged findings support the trial court's conclusion that the termination of Father's parental rights was in the best interests of the Children. We therefore affirm the trial court.

[21] Affirmed.

May, J., and Felix, J., concur.