

## 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.



---

### ATTORNEY FOR APPELLANT

R. Patrick Magrath  
Alcorn Sage Schwartz & Magrath, LLP  
Madison, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Monika Prekopa Talbot  
Deputy Attorney General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

In re the Termination of the  
Parent-Child Relationship of:

M.H. (Minor Child)  
and  
J.G. (Father),  
*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

September 8, 2021

Court of Appeals Case No.  
21A-JT-713

Appeal from the Bartholomew  
Circuit Court

The Honorable Lindsay Holden-  
Kay, Magistrate

Trial Court Cause No.  
03C01-2009-JT-4511

**Bailey, Judge.**

## Case Summary

- [1] J.G. (“Father”) appeals the trial court’s judgment terminating his parental rights as to M.H. (“Child”). The only issue he raises on appeal is whether the judgment is clearly erroneous.
- [2] We affirm.

## Facts and Procedural History

- [3] Father<sup>1</sup> and A.H. (“Mother”)<sup>2</sup> are the parents of Child, who was born on July 7, 2012. At the time of Child’s birth, Father was incarcerated. Until her removal, Child lived with Mother.
- [4] In May of 2019, the Indiana Department of Child Services (“DCS”) received reports that Child and her siblings: were visibly dirty; arrived at school with dog feces on them; rode bicycles, unsupervised, in the middle of a busy state road; stole food from a gas station; asked gas station customers for money; stole bicycles; and tampered with mailboxes. DCS also received reports that Mother used and sold illegal substances in the home. DCS found in its investigation

---

<sup>1</sup> Although paternity was not established, J.G. admitted to being Child’s father; therefore, we refer to him as “Father.” Appealed Order at 4; Tr. at 86.

<sup>2</sup> Mother does not participate in this appeal.

that Child had an injury on her finger from a knife allegedly wielded by one of her siblings, had dirt on her face and body, and had matted hair.

[5] Because Mother refused to make a plan with DCS for Child's safety and Father was incarcerated, on June 6, 2019, DCS removed Child from Mother's home and placed Child in foster care. On June 10, DCS filed a Child in Need of Services ("CHINS") petition as to Child. On September 17, 2019, upon Mother's admission, the juvenile court adjudicated Child to be a CHINS and ordered Mother to engage in services. On December 20, 2019, upon Father's admission that he was incarcerated and Mother had admitted to the other CHINS allegations, the court entered a dispositional order in which it ordered Father to engage in services, including Fatherhood Engagement, home based case management services, substance abuse assessment and treatment, therapeutic visits with Child, and random drug screens. At a November 21, 2019, review hearing, the court noted that Father had not been available to comply with Child's case plan due to his incarceration and ordered him to begin supervised visits with Child upon his release from prison.

[6] Father was released from prison on December 12, 2019, and DCS referred him for services as ordered by the court. Father never scheduled a substance abuse assessment and did not attend any substance abuse treatment appointments. Father "did not make any real progress in the Fatherhood Engagement program," and his referral was closed in July 2020 for lack of participation. Appealed Order at 8. Father submitted to random drug screens and tested

positive for illegal substances on March 23, 2020, April 24, 2020, May 1, 2020, May 5, 2020, and May 27, 2020.

- [7] On July 15, 2020, police pulled Father over for a traffic stop and discovered syringes and methamphetamine in his vehicle. Father admitted to possessing more paraphernalia at his home, and a subsequent search of his home disclosed his possession of other drugs and paraphernalia. Father admitted he needed help with drug abuse issues, and the authorities released him to a transitional center and drug rehabilitation program rather than jail or prison. However, Father left the transitional living center the same day he arrived and never went to the drug rehabilitation program. A warrant was issued for Father, and he was subsequently incarcerated again.
- [8] On September 16, 2020, DCS filed a petition to terminate both parents' rights as to Child. On October 29, 2020, the court issued an order terminating Mother's parental rights.
- [9] Father was released from jail on January 11, 2021 and placed on probation and house arrest. Father submitted to random drug screens and tested positive for marijuana on seven different occasions. Father failed to appear for some of the scheduled drug tests. Around February 5, 2021, Father requested another referral to the transitional living center, but did not show up at the scheduled date. Father came to the center a few days later but was not permitted to stay "due to his pattern of failing to follow-through." Appealed Order at 10.

[10] On February 19, 2021, the juvenile court held a fact-finding hearing on the petition to terminate Father's parental rights. On March 26, 2021, the juvenile court issued an order terminating Father's parental rights. In addition to the above facts, the termination order stated, in relevant part:

13. Alleged Father is currently on house arrest. Alleged Father will be on probation for the next three (3) years. Alleged Father has had ten (10) felony convictions since 2000. Those convictions include: criminal mischief in 2001; theft in 2004; battery resulting in serious bodily injury in 2006; theft in 2008; possession of methamphetamine in 2011; robbery in 2012; dealing in a schedule controlled substance in 2016; two counts of operating a vehicle as an habitual traffic violator in 2016; and possession of methamphetamine and possession of syringe in 2021. Father has had his probation revoked several times in the past. (DCS Exhibits 11b, 11e.)
14. Alleged Father has spent more than half of his life incarcerated. Alleged Father spent the first seven (7) years of [Child's] life incarcerated and did not have visits with her during that time. Alleged Father started using drugs when he was twelve (12) years old. Alleged Father testified that he does not know how to be a productive member of society. Alleged Father testified that he has never known how to be father, except for visits on the phone.
15. Alleged Father completed the Purposeful Incarceration Program while at Pendleton Correctional Facility and has been attending Groups for treatment since December 2019. However, Alleged Father relapsed shortly after his release from Pendleton, as shown by his positive drug screen for methamphetamine on March 23, 2020. Alleged

Father continued to test positive for illicit substances in April 2020 and May 2020. Alleged Father was then arrested for possession of methamphetamine and unlawful possession of a syringe in July 2020. Alleged Father further acknowledged that he had positive drug screens for marijuana since leaving Decatur County Jail in January 2021. Alleged Father's treatment while in Pendleton and at Groups has not made significant improvement in Alleged Father's sobriety. However, Alleged Father testified that his plan to maintain sobriety is to continue what he is currently doing.

\* \* \*

17. Alleged Father reports he recently obtained a job through a staffing agency. Alleged Father also reports recently obtaining housing. However, Alleged Father has not shown that he can maintain housing for a significant period of time. Alleged Father has primarily depended on family or friends for housing, and those housing options have proven short-term. Alleged Father's long-term plan for housing was to live with his father. However, he was kicked out of his father's home after his father found out that he was using methamphetamine and because Alleged Father continued to work at a tattoo parlor during the COVID-19 pandemic. Alleged Father testified that this was the reason for being kicked out of his father's home.

\* \* \*

19. [Child] was diagnosed with oppositional defiant disorder (ODD), attention deficit/hyperactivity disorder (ADHD), and post-traumatic stress disorder (PTSD), and intermittent explosive disorder (IED) by Centerstone staff.

\* \* \*

22. [Child] has never had a real relationship with Alleged Father. Alleged Father was not part of [Child's] life until the Department became involved with the family. Alleged Father and [Child] had visits for a brief six (6) month period between January 2020 and July 2020. [Child] was confused and traumatized at the beginning of visits. [Child] did not want to attend visits and asked to not attend visits with Alleged Father. When visits went virtual in March 2020, [Child] didn't feel as threatened. [Child] began adjusting to visits, but then Alleged Father was incarcerated again. [Child] has had no contact with Alleged Father since his incarceration in July 2020.
23. [Child] deserves permanency and a stable and loving family that can care for her. [Child] is searching for a family. [Child] has expressed her desire to be adopted.
24. FCM Bowling and GAL McQueen believe that adoption is in the best interest of [Child].
25. DCS'[s] plan for Child is that she be adopted, this plan is satisfactory for Child's care and treatment[,] and an adoptive family has been identified.
26. GAL McQueen is supportive of the plan of termination of parental rights and believes it is in the Child's best interests to be adopted.
27. DCS believes it is in the best interests of the Child to be adopted and for Father's parental rights to be terminated.

Appealed Order at 9-11.

[11] The juvenile court ultimately found, in relevant part:

2. There is a reasonable probability that:
  - a. the conditions that resulted in the [C]hild's removal or the continued placement outside the home will not be remedied by Alleged Father;
  - b. continuation of the parent-child relationship poses threat to the Child's well[-]being;
3. Termination of parental rights is in the Child's best interests;
4. There is a satisfactory plan for the care and treatment of the Child, that being Adoption.

*Id.* at 13.

[12] The trial court entered its judgment terminating Father's parental rights as to Child. Father now appeals.

## Discussion and Decision

### Standard of Review

[13] Father maintains that the trial court's order terminating his parental rights was clearly erroneous. We begin our review of this issue by acknowledging that the traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.



*See, e.g., In re C.G.*, 954 N.E.2d 910, 923 (Ind. 2011). However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). 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.

[14] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove, among other things:

(A) that one (1) of the following is true:

\* \* \*

(iii) The child has been removed from the parent and has been under the supervision of a local office or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(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) [and] that termination is in the best interests of the child ....

I.C. § 31-35-2-4(b)(2). DCS need establish only one of the requirements of subsection (B) before the trial court may terminate parental rights. *Id.* DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G. Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[15] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[16] Here, in terminating Father’s parental rights, the trial court entered specific findings of fact and conclusions thereon. Ind. Trial Rule 52(A). When a trial

court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & Children*, 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.

## Conditions that Resulted in Child's Removal/Continued Placement

[17] Father does not challenge any specific factual findings of the court. Rather, he maintains that the trial court erred in determining that, by clear and convincing evidence, there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside the home will not be remedied. We must determine whether the evidence most favorable to the judgment supports the trial court's determination. *In re D.D.*, 804 N.E.2d at 265; *Quillen*, 671 N.E.2d at 102. In doing so, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). "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.* (quotations and citations omitted).

[18] In the first step, we consider not only the initial reasons for removal, but also the reasons for continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013). In the second step, the trial court must judge a parent’s fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d at 643. The court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *Moore v. Jasper County Dept. of Child Services*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted); *see also In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008) (noting the “trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship”). In evaluating the parent’s habitual patterns of conduct, the court may disregard efforts made shortly before the termination hearing and weigh the history of the parent’s prior conduct more heavily. *In re K.T.K.*, 989 N.E.2d 1225, 1234 (Ind. 2013). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *Moore*, 894 N.E.2d at 226.

[19] Here, when Child was removed from Mother’s home, Father was not living with Child due to his incarceration. “Removal” from Father then occurred when DCS removed Child from Mother’s home and was unable to place her with Father due to his incarceration. *See In re A.G.*, 45 N.E.3d 471, 476-77 (Ind. Ct. App. 2015) (holding “constructive removal” from Father occurred when

paternity was established and DCS was unable to place child with Father due to his incarceration) (citing *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)), *trans. denied*. Father had an extensive criminal history, having spent more than half his life incarcerated. During the CHINS action, Father was released from prison but then reincarcerated six months later for drug-related convictions. During the brief time he was out of prison, Father only partially participated in some services and failed to participate at all in others, such as obtaining a drug abuse assessment. During that time, Father also repeatedly tested positive for illegal substances. Although Father had some supervised visits with Child, Father was reincarcerated just when Child was beginning to adjust to the visits with him.

[20] At the time of the termination hearing, Father had been released from jail again for approximately one month. During that time, he had no visitation with Child and he tested positive for illegal substances on seven different occasions. Thus, Father displayed a habitual pattern of criminal activity and incarceration which showed a reasonable probability that he would not remedy the conditions that led to Child's constructive removal from him, i.e., his incarceration. While Father alleged that he had recently obtained employment and housing, those allegations were not verified by DCS. In addition, the trial court was entitled to disregard the efforts Father made shortly before the termination hearing and weigh his extensive history of criminal conduct and incarceration more heavily. *See In re K.T.K.*, 989 N.E.2d at 1234. Father's arguments to the contrary are merely requests that we reweigh the evidence,

which we may not do. See *In re D.D.*, 804 N.E.2d at 265. The trial court did not clearly err when it found there is a reasonable probability that Father will not remedy the reasons for Child’s removal.<sup>3</sup>

## Child’s Best Interests

[21] In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010). “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.” *Castro*, 842 N.E.2d at 374. “Additionally, a child’s need for permanency is an important consideration in determining the best interests of a child, and the testimony of the service providers may support a finding that termination is in the child’s best interests.” *In re A.K.*, 924 N.E.2d at 224. Such evidence, “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 child’s best interests.” *In re A.D.S.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

---

<sup>3</sup> Because DCS need only establish one of the requirements of subsection (b)(2)(B) of Indiana Code Section 31-35-2-4, we do not address Father’s argument that his potential relationship with Child would pose no threat to her well-being.

[22] Father has been in prison for most of Child’s life. “[I]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.” *Castro*, 842 N.E.2d at 374 (quotation and citation omitted). In *Castro*, we noted that, when a parent has been incarcerated for most of a child’s life, the parent has a “historic inability to provide housing, stability and supervision” for the child. *Id.* Such is the case here.

[23] Furthermore, when Father did have visitation with Child during his brief period of freedom from prison, Child was traumatized by those visits. And just as Child was beginning to become accustomed to visits, Father was once again convicted of drug-related crimes and incarcerated.<sup>4</sup> Moreover, the evidence established that Child was thriving in her pre-adoptive placement. Thus, it is unsurprising that the DCS Family Case Manager and the Guardian Ad Litem testified that termination of parental rights is in Child’s best interests. That evidence, in addition to evidence that the conditions resulting in Child’s constructive removal from Father would not likely be remedied, is sufficient to show by clear and convincing evidence that termination is in Child’s best interests. *See In re A.D.S.*, 987 N.E.2d at 1158-59.

---

<sup>4</sup> Thus, the fact that Father had only “six months of meaningful services before his rights were terminated” was the result solely of his own criminal conduct and incarceration. Appellant’s Br. at 10.

[24] The trial court did not clearly err in finding that termination was in Child's best interests.

## Conclusion

[25] The trial court did not commit clear error when it terminated Father's parental rights to Child.

[26] Affirmed.

Crone, J., and Pyle, J., concur.