

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

Paul M. Blanton
Blanton & Pierce, LLC
Jeffersonville, 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
C.E., M.E., and G.P. (Minor
Children);

D.E. (Father) and D.P.
(Mother),

Appellants-Respondents,

v.

The Indiana Department of
Child Services,

Appellee-Plaintiff.

May 24, 2022

Court of Appeals Case No.
21A-JT-2340

Appeal from the Lawrence Circuit
Court

The Honorable Nathan G. Nikirk,
Judge

Trial Court Cause Nos.
47C01-2103-JT-96
47C01-2103-JT-97
47C01-2103-JT-98

Pyle, Judge.

Statement of the Case

- [1] In this joint appeal, D.P. (“Mother”) and D.E. (“Father”) (collectively “Parents”) appeal the termination of the parent-child relationships with their three daughters, G.P. (“G.P.”), M.E. (“M.E.”), and C.E. (“C.E.”) (collectively “the Children”). Parents argue that there is insufficient evidence to support the terminations. Concluding that there is sufficient evidence to support the termination of the parent-child relationships, we affirm the trial court’s judgment.
- [2] We affirm.

Issue

Whether there is sufficient evidence to support the termination of the parent-child relationships.

Facts

- [3] The facts most favorable to the terminations reveal that Mother and Father are the parents of G.P., who was born in March 2017; M.E., who was born in February 2018; and C.E., who was born in January 2019. Parents first became involved with DCS in March 2017. At that time, Parents were incarcerated for probation violations and charges of possession of methamphetamine. While incarcerated, Mother gave birth to G.P., who tested positive for THC. Mother admitted that she had used methamphetamine while pregnant with G.P. Because Parents were incarcerated and Mother had been using methamphetamine, G.P. was placed with relatives.

- [4] Parents were released from incarceration in May 2017 and agreed to participate in DCS services and follow a safety plan. In June 2017, Parents agreed to participate in an informal adjustment with DCS, and G.P. was returned to Parents' care. However, one week later, Mother tested positive for methamphetamine. After Mother again tested positive for methamphetamine in early July 2017, DCS filed a petition alleging that G.P. was a child in need of services ("CHINS"). Mother moved out of the home, and G.P. remained in the home with Father.
- [5] The trial court adjudicated G.P. to be a CHINS in January 2018 and issued a dispositional order in February 2018. Pursuant to the terms of the dispositional order, Parents were required to, among other things, abstain from the use of illegal substances, complete parenting assessments and follow all recommendations, complete substance abuse assessments and follow all recommendations, and submit to random drug screens.
- [6] Two weeks after the trial court had issued its dispositional order in G.P.'s case, Mother gave birth to M.E. in February 2018. Mother tested positive for methamphetamine at the time of M.E.'s birth and admitted that she had used methamphetamine during her pregnancy. Father also tested positive for methamphetamine and told a DCS case manager that he had allowed Mother to have unsupervised visits with G.P. without DCS' authorization. DCS removed both G.P. and M.E. from Parents and placed the two children with relatives.

- [7] Three months later, in May 2018, Parents attended a DCS team meeting. Because Parents had been engaging in services and testing negative on drug screens, DCS recommended returning G.P. and M.E. to Parents' care. In June 2018, G.P. and M.E. were returned to Parents pursuant to a trial court's order. Shortly thereafter, Parents refused to allow DCS case workers access to G.P. and M.E. and stopped participating in services, including drug screens. In August 2018, DCS again removed G.P. and M.E. from Parents' care.
- [8] Also in August 2018, the trial court adjudicated M.E. to be a CHINS. The following month, September 2018, the trial court issued a dispositional order in M.E.'s case that required Parents to, among other things, abstain from the use of illegal substances, complete parenting assessments and follow all recommendations, complete substance abuse assessments and follow all recommendations, and submit to random drug screens.
- [9] In January 2019, Mother gave birth to Parents' third daughter, C.E. DCS did not remove C.E. from Parents because Parents had again been participating in services and abstaining from the use of illegal drugs. In May 2019, DCS returned G.P. and M.E. to Parents for a trial home visit. Although Parents tested positive for methamphetamine in July 2019, DCS offered Parents a safety plan. Specifically, Parents agreed that any additional positive drug screens could result in the termination of the trial home visit as well as the removal of the Children. When Parents tested positive a second time for methamphetamine, DCS removed the Children from Parents in August 2019.

- [10] Also in August 2019, DCS filed a petition alleging that C.E. was a CHINS. The trial court adjudicated C.E. to be a CHINS in November 2019 and issued a dispositional order in December 2019. The dispositional order required Parents to, among other things, abstain from the use of illegal substances, complete substance abuse assessments and follow all recommendations, and submit to random drug screens.
- [11] Over the course of the following year, Parents participated in services, including recovery therapy, individual therapy, and Moral Recognition Therapy. In addition, Parents attended visits with the Children. However, Parents also continued to use and test positive for methamphetamine throughout 2020 and in the early months of 2021. In March 2021, DCS filed a petition to terminate Parents' parental relationships with the Children.
- [12] In April 2021, Father told a recovery coach that he did not understand how his drug use had negatively impacted others when he had been working hard and had been supporting his family. In May 2021, Mother attended a twenty-one-day inpatient drug treatment program. However, Mother relapsed on methamphetamine one week after completing the program. Mother also attended a twenty-eight-day inpatient drug treatment program in July and August 2021 but again relapsed on methamphetamine shortly after completing the program.
- [13] At the two-day September 2021 termination hearing, the trial court heard the evidence as set forth above. In addition, DCS Family Case Manager Jesus

Arroyo (“FCM Arroyo”), who had been assigned to the case in April 2021, testified that the reason for the Children’s removal had been Parents’ methamphetamine use. When asked whether Parents’ participation in services had remedied the reason for the Children’s removal, FCM Arroyo responded that “the original reason for [DCS’] involvement ha[d] not been alleviated.” (Tr. Vol. 2 at 176). Specifically, FCM Arroyo pointed out that Parents were still using methamphetamine four years after their first child had been removed from their care.

[14] FCM Arroyo further testified that, after several placement changes, G.P. and M.E. had been placed together in foster care six months before the termination hearing. At the time of the placement, four-year-old G.P. and three-year-old M.E. had been unable to independently use the restroom, wash their hands, or brush their teeth. In addition, both G.P. and M.E. had difficulty sleeping and had hit and pinched their foster parents. G.P. and M.E. had also thrown and broken items in the foster parents’ home. However, at the time of the termination hearing, G.P. and M.E. were able to independently use the restroom, wash their hands, and brush their teeth, and their destructive behaviors had improved. According to FCM Arroyo, the foster parents planned to adopt both G.P. and M.E. In addition, FCM Arroyo testified that C.E. had been placed with an aunt and uncle for the previous two years and that she was “just part of the family[]” and “just very happy with life.” (Tr. Vol. 2 at 183). FCM Arroyo concluded that termination was in the Children’s best interests because the Children needed stability. According to FCM

Arroyo, the previous four years of CHINS proceedings “ha[d] taken a toll on the little ones[.]” (Tr. Vol. 2 at 186). DCS Family Case Manager Yasemine Lockwood (“FCM Lockwood”), who had been assigned to the case before FCM Arroyo, also testified that termination was in the Children’s best interests.

[15] CASA Melissa Craig (“CASA Craig”), who had been assigned to the case in October 2019, testified that she had concerns about the four-year length of the case and Parents’ inability to reach the goal of sobriety. According to CASA Craig, the length of the case had caused trauma to both G.P. and M.E. CASA Craig further opined that termination was in the Children’s best interests.

[16] Parents also testified at the termination hearing. Mother admitted that she had used methamphetamine three days before the hearing but asked the trial court for “one last chance[.]” (Tr. Vol. 3 at 10). Father also admitted that he had used methamphetamine three days before the hearing but also asked the trial court for “one more shot.” (Tr. Vol. 3 at 26). Father explained that he had “got[ten] off the heroin” five years ago and was “working on . . . [t]he meth.” (Tr. Vol. 3 at 23).

[17] Three weeks after the termination hearing, the trial court issued a detailed twelve-page order terminating the parental relationships between Parents and the Children. The trial court’s order specifically concluded that there was a reasonable probability that the conditions that had resulted in the Children’s removals would not be remedied and that termination of Parents’ parental rights was in the best interests of the Children.

[18] Parents now appeal the terminations.

Decision

[19] Parents argue that there is insufficient evidence to support the terminations.

The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment to the United States Constitution. *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *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. *Id.* at 1188. Termination of the 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.*

[20] Before an involuntary termination of parental rights may occur, 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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K. v. Indiana Department of Child Services*, 989 N.E.2d 1225, 1230 (Ind. 2013).

[21] When reviewing a termination of parental rights, this Court will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We consider only the evidence and any reasonable inferences to be drawn therefrom that support the judgment and give due regard to the trial court's opportunity to judge the credibility of the witnesses firsthand. *K.T.K.*, 989 N.E.2d at 1229.

[22] We further note that, in determining whether to terminate a parent-child relationship, trial courts have discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination and may find that a parent's past behavior is the best predictor of future behavior. *D.B.M. v. Indiana Department of Child Services*, 20 N.E.3d 174, 181-82 (Ind. Ct. App. 2014), *trans. denied*. We have also stated that the time for a parent to rehabilitate himself or herself is during the CHINS process, before DCS files a termination petition. *Prince v. Department of Child Services*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007).

[23] Parents first argue that DCS failed to prove by clear and convincing evidence that: (1) 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) a continuation of the parent-child relationships poses a threat to the children's well-being. However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for their placement outside the home will not be remedied.

[24] In determining whether the conditions that resulted in a child's removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step requires trial courts to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include parents' prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment.

A.D.S. v. Indiana Department of Child Services, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *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 his future behavior. *E.M.*, 4 N.E.3d at 643.

[25] Here, our review of the evidence reveals that the Children were removed from Parents because of Parents' methamphetamine use. During the four-year pendency of the CHINS proceedings, DCS twice returned the Children to Parents' care. However, Parents used methamphetamine both times, and DCS removed the Children. At the termination hearing, Parents admitted that they had used methamphetamine just three days before the hearing. This evidence supports the trial court's conclusion that there was a reasonable probability that the conditions that resulted in the children's removal would not be remedied. We find no error.

[26] Parents next argue that there is insufficient evidence that the termination was in the Children's best interests. In determining whether termination of parental rights is in the children's best interests, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the children involved. *Id.* In addition, children's needs for permanency are a central consideration in determining the children's best

interests. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the children's best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[27] Here, our review of the evidence reveals that FCM Arroyo, FCM Lockwood, and CASA Craig all testified that termination was in the Children's best interests. FCM Arroyo pointed out that the Children needed stability because the four-year pendency of the CHINS proceedings had taken a toll on them. In addition, CASA Craig testified that the length of the case had caused trauma to both G.P. and M.E. The testimony of FCM Arroyo, FCM Lockwood, and CASA Craig, as well as the other evidence previously discussed, supports the trial court's conclusion that termination was in the Children's best interests. There is sufficient evidence to support the terminations.

[28] Affirmed.

Robb, J., and Weissmann, J., concur.