

## 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 re the Involuntary  
Termination of the Parent-Child  
Relationship of M.R.A.F.  
(Minor Child) and  
L.B. (Father),  
*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner*

November 21, 2022

Court of Appeals Case No.  
22A-JT-1597

Appeal from the Tippecanoe  
Superior Court

The Honorable Faith Graham,  
Judge

Trial Court Cause No.  
79D03-2112-JT-89

**Crone, Judge.**

## Case Summary

- [1] L.B. (Father) appeals the involuntary termination of his parental rights to his minor child M.R.A.F. (Child). We affirm.

### Facts and Procedural History

- [2] C.F. (Mother) and Father are the parents of Child, born June 6, 2009.<sup>1</sup> In March 2020, the Tippecanoe County Department of Child Services (DCS) received a report alleging that Child, as well as Mother's other children living in the home, were being neglected due to exposure to illegal activity. Specifically, Mother was alleged to be harboring a fugitive in the home and exposing the children to illegal drug use. During the investigation, Mother tested positive for methamphetamine. Father (who was only the alleged father of Child) could not be located at the time.<sup>2</sup> It was also noted that Mother was involved in multiple cases alleging neglect of her other children. Accordingly, Child was taken into protective custody, and a CHINS petition regarding Child was filed. Father's location continued to be unknown, and he was subsequently notified by publication that Child had been adjudicated a CHINS. A dispositional order was issued in which Father was ordered to establish paternity and to participate in a clinical interview and assessment, substance use assessment, parenting evaluation, random drug screens, and parenting time. By January 2021, Mother

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<sup>1</sup> Mother's parental rights were also terminated by separate order.

<sup>2</sup> Mother and Father were never involved in any relationship outside of conception.

had failed to participate in services and relocated to North Carolina, and Father still could not be located. Child's permanency plan was determined to be adoption.

[3] Father was finally located in April 2021. He was incarcerated at the time. Father completed genetic testing confirming his paternity of Child and requested parenting time. A second permanency hearing was held, and Child's permanency plan was changed to a concurrent plan of reunification and adoption. Father was released from incarceration but was not permitted to start supervised parenting because he refused to submit to a drug screen until July 23, 2021. Father attended case management services but then failed to attend counseling as recommended. Father was incarcerated again in October 2021. Father has an extensive violent criminal history including seven prior convictions and multiple petitions to revoke probation. At the time of termination, Father had twelve pending criminal charges including six felonies and six misdemeanors. Father has six other children with four different women. Those children range in age from nineteen to ten months, and each of those children resides with their respective mothers.

[4] DCS filed a termination of parental rights petition in January 2022. The trial court held a factfinding hearing in March 2022. On May 24, 2022, the trial court entered its findings of fact and concluded as follows: (1) there is a reasonable probability that the conditions that resulted in Child's removal and continued placement outside Father's care will not be remedied; (2) there is a reasonable probability that continuation of the parent-child relationship

between Father and Child poses a threat to Child's well-being; (3) termination of the parent-child relationship between Father and Child is in Child's best interests; and (4) DCS has a satisfactory plan for Child's care and treatment, which is adoption. Accordingly, the trial court determined that DCS had proven the allegations of the petition to terminate by clear and convincing evidence, and therefore it terminated Father's parental rights. This appeal ensued.

### **Discussion and Decision**

[5] “The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities.” *In re A.P.*, 882 N.E.2d 799, 805 (Ind. Ct. App. 2008) (citation omitted). “[T]ermination is intended as a last resort, available only when all other reasonable efforts have failed.” *Id.* A petition for the involuntary termination of parental rights must allege in pertinent part:

(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 that termination is appropriate by a showing of clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a).

[6] “We have long had a highly deferential standard of review in cases involving the termination of parental rights.” *C.A. v. Ind. Dep’t of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014).

We neither reweigh evidence nor assess witness credibility. We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. Where the trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review: we first determine whether the evidence supports the findings and then determine whether the findings support the judgment. 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.* at 92-93 (citations omitted). “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005).

**Section 1 – Sufficient evidence supports the trial court’s conclusion that there is a reasonable probability of unchanged conditions.**

[7] Father challenges the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in Child’s removal from and continued placement outside his care will not be remedied.<sup>3</sup> In determining whether there is a reasonable probability that the conditions that led to Child’s removal and continued placement outside the home will not be remedied, we engage in a two-step analysis. *K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to [his] placement and retention in foster care.” *Id.* Second, “we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1132, 1134 (Ind. 2010)). In the second step, the trial court must judge a parent’s fitness at the time of the proceeding, taking into consideration evidence of changed conditions, and balancing a parent’s recent improvements against “habitual pattern[s] of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “A pattern of unwillingness to deal with parenting problems and to cooperate with

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<sup>3</sup> Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, to properly effectuate the termination of parental rights, the trial court need find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Thus, although Father also challenges the trial court’s conclusion that there is a reasonable probability that continuation of the parent-child relationship poses a threat to Child’s well-being, we address only the evidence pertaining to 4(b)(2)(B)(i).

those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change.” *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The evidence presented by DCS “need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent’s behavior will not change.” *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

[8] Here, Child was initially removed from the home and has remained outside Father’s care for a multitude of reasons, including that Father could not be located and had never made attempts to provide for Child. When DCS did locate Father, he was incarcerated. Although Father was again incarcerated at the time of termination, contrary to Father’s claim, the trial court did not improperly base its termination decision solely upon Father’s current incarceration. *See In re GY*, 904 N.E.2d. 1257, 1264-66 (Ind. 2009) (incarceration is an insufficient basis for terminating parental rights). Rather, the trial court relied upon Father’s habitual patterns of conduct and determined there was a substantial probability of future neglect or deprivation. Specifically, Father has an extensive criminal history and has continued to engage in criminal behavior (including six violent felony charges) throughout the pendency of the CHINS proceedings. Father minimizes his criminal history and has obviously “failed to apply lessons learned” and continued to engage in such behavior. Appealed Order at 4. Father has failed to achieve any stability over the span of more than twelve years due to his repeated criminal activity and

there is simply no reasonable probability that Father's behavior will change to allow him to successfully parent Child.

[9] In addition to the lack of stability demonstrated by Father's continued criminal conduct and repeated incarcerations, Father failed to successfully participate in offered services even when he was not incarcerated. Although Father attended case management services, he failed to attend family counseling as recommended. Moreover, as found by the trial court, while Father knew of his likely paternity of Child well before and during the CHINS proceedings, he took no action to establish paternity until a full year into the CHINS proceedings. Then, despite being given the opportunity to visit with Child, Father attended only one virtual visit. Child, who was eleven years old at the time, was traumatized after the visit and was observed to have no bond with Father. The lack of bond between Father and Child can be blamed only on Father.

[10] In short, there is no question that Father's habitual pattern of behavior has resulted in his neglect of Child such that "there is a substantial probability of future neglect or deprivation." *K. T.K.*, 989 N.E.2d at 1234. The evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that led to Child's removal and continued placement outside Father's care will not be remedied.



## **Section 2 – Sufficient evidence supports the trial court’s conclusion that termination is in Child’s best interests.**

[11] Father also challenges the trial court’s conclusion that termination of his parental rights is in Child’s best interests. To determine whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. Termination of parental rights is not appropriate solely because there is a better home available for the child. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). However, in assessing a child’s best interests, the trial court “must subordinate the interests of the parents to those of the child[.]” *A.D.S.*, 987 N.E.2d at 1158. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification—and courts ‘need not wait until a child is irreversibly harmed such that the child’s physical, mental, and social development is permanently impaired before terminating the parent-child relationship.’” *E.M.*, 4 N.E.3d at 648 (quoting *K.T.K.*, 989 N.E.2d at 1235). “Permanency is a central consideration in determining the best interests of a child.” *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Recommendations of service providers, 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. *A.D.S.*, 987 N.E.2d at 1158-59.

[12] Here, DCS family case manager (FCM) Lashata Thomas testified that termination of Father’s parental rights was in Child’s best interests. FCM

Thomas was concerned about Father's repeated violent criminal behavior and inability to provide stability for Child. She recalled how Child was severely traumatized after a single visit with Father. Child began wetting the bed and performing poorly in school and needed to seek therapy as a result. FCM Thomas stated that she believed that any exposure to Father would further traumatize Child, and that Child was doing quite well in his preadoptive placement with one of his siblings. Similarly, court-appointed special advocate Hilary Laughner opined that termination of Father's parental rights was in Child's best interests. Laughner noted that Child had been without permanency long enough after being adjudicated CHINS back in 2020. She also stated that Child undoubtedly considered his preadoptive placement as "home." Tr. Vol. 2 at 18.

[13] This testimony, in addition to the already mentioned evidence that the conditions resulting in Child's removal from Father's care will not be remedied, is sufficient to show by clear and convincing evidence that termination of Father's parental rights is in Child's best interests. Father's claim that "he hasn't been provided every reasonable opportunity" to develop his relationship with Child rings hollow. Appellant's Br. at 24. Simply put, individuals who choose to pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with a child. *K. T.K.*, 989 N.E.2d at 1235-36. We affirm the trial court's termination order.

[14] Affirmed.

May, J., and Weissmann, J., concur.