

## 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 the Matter of the Termination  
of the Parent-Child Relationship  
of J.D. and L.D. (Minor  
Children);

T.D. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

July 9, 2021

Court of Appeals Case No.  
21A-JT-38

Appeal from the Scott Superior  
Court

The Honorable Marsha Owens  
Howser, Judge

Trial Court Cause Nos.  
72D01-2008-JT-70  
72D01-2008-JT-71

**Najam, Judge.**

## Statement of the Case

- [1] T.D. (“Father”) appeals the trial court’s termination of his parental rights over his minor children. Father presents a single issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of his parental rights.
- [2] We affirm.

## Facts and Procedural History

- [3] Father and K.G. (“Mother”) (collectively, “Parents”) were married and have two children together, L.D., born January 31, 2006, and J.D., born November 18, 2007 (collectively, “Children”).<sup>1</sup> On December 26, 2018, DCS received a report that Father’s home had neither electricity nor running water. In addition, DCS was notified that Father had left the Children alone, without supervision, for days at a time and that Father was abusing drugs. Stephanie Tackett, a family case manager (“FCM”) with DCS, went to Father’s home and found the Children home alone. A few days later, Tackett found Father at home and spoke with him. Tackett observed that the home was “basically empty,” with no water and electricity only from a gas-powered generator. Tr. at 20. Tackett observed that “the home smelled completely of gasoline.” *Id.* Father declined Tackett’s request that he submit to a drug screen, but he told

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<sup>1</sup> Mother does not participate in this appeal.

Tackett that he “would address” concerns she had about the living conditions in the home and the Children. *Id.* at 21.

- [4] In January 2019, DCS received a report that the Children had not returned to school after the Christmas break. Tackett substantiated that report and found that Father had not remedied the conditions of the home. Accordingly, on January 24, DCS removed the Children from Father’s care. Mother’s whereabouts were unknown at that time. DCS filed petitions alleging that the Children were children in need of services (“CHINS”).
- [5] At a factfinding hearing on the CHINS petitions on March 26, Father appeared and admitted that the Children were CHINS. In particular, Father “admitted to having ongoing issues with substance abuse that interfere[d] with his ability to provide [the Children] with necessary shelter, education, and supervision.” Appellant’s App. Vol. 2 at 121. Mother did not appear. The juvenile court found that the Children were CHINS as to both Parents. At the conclusion of a disposition hearing in April, the trial court ordered Father to, among other things: complete a parenting assessment and successfully complete all recommended services; complete a substance abuse assessment and successfully complete all recommended treatment; submit to random drug screens; complete a psychological evaluation and successfully complete any recommended treatment; attend all scheduled visitations with the Children; and maintain suitable, safe, and stable housing.

- [6] Father was incarcerated from February 28 through March 7 and from April 20 through May 3. Father did not complete a substance abuse assessment until May 22, and he was referred to group therapy. Father only attended two group therapy sessions out of nineteen scheduled sessions. Father completed a parenting assessment, and he was referred to participate in “Homemaker/Parent Aid services to help with organizing the home, budgeting, maintaining utilities year round, and finding stable employment.” *Id.* at 128. Father did not participate in those services. Neither did Father participate in recommended home-based services. Seven out of the ten drug screens Father submitted were positive for amphetamine and methamphetamine. Father did not maintain consistent contact with the FCM. Finally, of the twenty-one scheduled visits between Father and the Children, “Father did not show up to four visits, canceled one visit, arrived late to eight visits, and passed out and injured himself during one visit.” *Id.* at 129.
- [7] On August 26, 2020, DCS filed petitions to terminate Parents’ parental rights over the Children. The trial court held a factfinding hearing on November 12. Parents were represented by counsel at the hearing. Father appeared in person, but Mother failed to appear. On December 8, the trial court entered orders terminating Parents’ parental rights. This appeal ensued.

## **Discussion and Decision**

- [8] Father contends that the trial court erred when it terminated his parental rights. 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.” *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.

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

(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) (2021). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R.Y. v. Ind. Dep’t of Child Servs. (In re G.Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[10] 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*.

[11] Here, in terminating Father’s parental rights, the trial court entered specific 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.

[12] Father does not challenge any of the trial court's findings. Father purports to challenge the trial court's conclusions that the conditions that resulted in the Children's removal and the reasons for their placement outside of Father's home will not be remedied, there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of the Children, and that termination is in the Children's best interests. However, he only presents cogent argument in support of his contention that the court erred when it concluded that the conditions that resulted in the Children's removal and the reasons for their placement outside of Father's home will not be remedied. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and because Father did not also present argument to support his assertions that the court erred when it concluded that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of the Children, Father has waived these issues for our review. Ind. Appellate Rule 46(A)(8)(a).

[13] Waiver notwithstanding, we address the merits of Father's contention that DCS presented insufficient evidence to support termination of his parental rights. The trial court concluded both that (1) the conditions that resulted in the Children's removal and the reasons for their placement outside of Father's home will not be remedied and (2) that there is a reasonable probability that the continuation of the parent-child relationships poses a threat to the well-being of

the Children. However, again, as Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only address on appeal the sufficiency of the evidence to support one prong of that subsection the statute. Accordingly, we address whether DCS presented sufficient evidence to prove that the conditions that resulted in the Children's removal and the reasons for their placement outside of Father's home will not be remedied. We also address Father's contention that termination of Father's parental rights is not in the Children's best interests.

*Reasons for Children's Placement Outside of Father's Home*

[14] This Court has clarified that, given the wording of the statute, it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent's rights should be terminated, but also any basis resulting in the continued placement outside of a parent's home. *Inkenhaus v. Vanderburgh Cnty. Off. of Fam. & Child. (In re A.I.)*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court properly considered the conditions leading to the continued placement of the Children outside of Father's home. Put simply, Father has not demonstrated any willingness or ability to provide a stable home for the Children.

[15] We hold that the evidence supports the trial court's findings and conclusion on this issue. To determine whether there is a reasonable probability that the reasons for Children's continued placement outside of Father's home will not be remedied, the trial court should judge Father's fitness to care for the Children at the time of the termination hearing, taking into consideration



evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also “evaluate the parent[s'] habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren].” *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Moreover, 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. *Id.*

[16] The trial court found, and the evidence supports, that Father did not successfully complete any services. Most compelling is the evidence that Father continued to abuse amphetamine and methamphetamine throughout the CHINS proceedings. And Father's visitation with the Children was ultimately suspended “due to an active warrant on Father.” Appellant's App. Vol. 2 at 129. At the final hearing, the FCM, Matt Krieger, testified that he did “not believe the reasons for removal are likely to be remedied as Father made no improvement on home conditions or substance abuse issues during his involvement on the case” between March and September 2019. *Id.* Shane Floyd, the FCM who replaced Krieger, testified that, as of one month before the final hearing in November 2020, Father's home “d[id] not have running

water. [It did] not have electricity. And . . . nothing ha[d] improved as far as [he could] tell.” Tr. at 59.

- [17] Father’s argument on appeal is simply an invitation for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Based on the totality of the circumstances, we hold that the trial court’s findings support its conclusion that there is a reasonable probability the conditions that resulted in Children’s removal and the reasons for their placement outside of Father’s home will not be remedied.

#### *Best Interests*

- [18] In determining what is in a child’s best interests, a juvenile 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.*

- [19] 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 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.*

[20] As the trial court's extensive findings demonstrate, Father has not shown that he is capable of parenting the Children. The Children are bonded and thriving in their pre-adoptive home. Both the FCM and the CASA testified that termination of Father's parental rights is in the Children's best interests. Given the totality of the evidence, Father cannot show that the trial court erred when it concluded that termination of his rights is in the Children's best interests.

### ***Conclusion***

[21] Father has not shown that DCS presented insufficient evidence to support the termination of his parental rights over the Children.

[22] Affirmed.

Pyle, J., and Tavitas, J., concur.