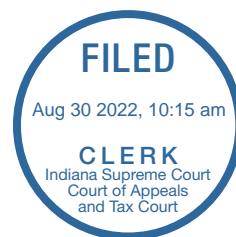


MEMORANDUM DECISION

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 Termination of the
Parent-Child Relationship of
Ja.R. and Ju.R. (Minor
Children) and J.R. (Father) and
H.R. (Mother)

J.R. (Father) and
H.R. (Mother),

Appellants-Respondents,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

August 30, 2022

Court of Appeals Case No.
22A-JT-748

Appeal from the
Marion Superior Court

The Honorable
Danielle Gaughan, Judge

The Honorable
Peter Haughan, Magistrate

Trial Court Cause Nos.
49D15-2103-JT-1662
49D15-2103-JT-1663

Vaidik, Judge.

Case Summary

- [1] H.R. (“Mother”) and J.R. (“Father”) appeal the termination of their parental rights to their two children. We affirm.

Facts and Procedural History

- [2] Mother and Father (“Parents”) are the biological parents of Ju.R., who was born in January 2018, and Ja.R., who was born in July 2019. In September 2018, the Indiana Department of Child Services (DCS) filed a petition alleging eight-month-old Ju.R. was a child in need of services (CHINS) because Parents had nowhere to live and struggled with substance abuse, particularly opiates. Ju.R. was removed from Parents and hasn’t been returned to them since. The court found Ju.R. to be a CHINS and ordered Parents to complete services. Mother was ordered to participate in home-based therapy and follow all recommendations, submit to random drug screens, participate in a dual-diagnosis evaluation (substance abuse and mental health) and follow all recommendations, and participate with a homemaker parent aide and follow all recommendations. Father was ordered to complete a parenting assessment and substance-abuse assessment and follow all recommendations, submit to random drug screens, complete Father Engagement, and participate in weekly therapy through Clean Slate.

[3] Ja.R. was born in July 2019. That same month, DCS filed a petition alleging Ja.R. was a CHINS because Parents had failed to engage in the services ordered in Ju.R.'s case, parenting time with Ju.R. had been suspended, Parents continued to use drugs, and Parents refused to provide any records about Ja.R.'s birth. *See* Appellants' App. Vol. II p. 27. Ja.R. was removed from Parents and hasn't been returned to them since. The court found Ja.R. to be a CHINS and ordered Parents to complete services, including the original ones plus new ones. Mother was ordered to participate in a home-based case management program and follow all recommendations and complete a parenting assessment and follow all recommendations. Father was ordered to participate in a dual-diagnosis evaluation and follow all recommendations.

[4] At first, Parents visited the children and participated in some services. But in December 2020, things started to go "downhill" for Parents. *Tr.* Vol. II p. 160. That month, there was a domestic-violence incident between Mother and Father, and Father was arrested.¹ As a result of this incident, the trial court ordered Parents to complete domestic-violence counseling.

[5] In March 2021, DCS petitioned to terminate Mother's and Father's parental rights to the children. In July, Mother was arrested for operating while intoxicated (and was later convicted). The termination hearing took place on August 24, August 31, and September 7. Right before the hearing started on

¹ Father was charged with strangulation and domestic battery, and a no-contact order was issued. The charges were dismissed in April 2021, and the no-contact order was terminated in June 2021.

August 24, Father's attorney told the trial court that Father, who had notice of the hearing, wasn't present. He said he asked Mother where Father was, and she said he was at work. Father's attorney asked for a continuance, but the court said no. Father appeared for the second and third days, testifying on the third.

- [6] At the time of the termination hearing, the children were in separate foster homes, where they had been for two years, and were bonded with their foster families, who wanted to adopt them. Several witnesses testified about Parents' failure to complete the court-ordered services.
- [7] One of the main reasons for DCS involvement was substance abuse. Parents, who received treatment at a suboxone clinic for their opioid addiction, had been ordered to submit to random drug screens, but they were no longer doing so (and thus DCS didn't know whether they were using drugs). Mother's last drug screen was in June 2021, and Father's last drug screen was in April 2021. Mother relapsed in mid-April when Father brought fentanyl into the home. Parents believed there was no need for them to screen since "DCS [was] going to keep their children any way." *Id.* at 169.
- [8] Another reason for DCS involvement was Parents' lack of housing. At the time of the termination hearing, Parents lived together and planned "to get married so that DCS [couldn't] keep them apart." *Id.* at 169. Although Parents claimed their housing was stable, they made "contradicting statements" to DCS. *Id.* at 170. At other times, Parents claimed they were looking for alternative housing

or living with family members. This made it “really hard” for DCS to determine “exactly” where they were living. *Id.*

[9] During their three years of DCS involvement, Parents attended around 200 visits with the children. But as the case moved toward termination, Parents’ attendance decreased. Father had always been inconsistent, including missing visits for months at a time and the three weeks before the termination hearing. *Id.* at 240. Although Mother had been more consistent, she missed three and a half weeks that summer. She also missed a visit on August 23, the day before the hearing. *Id.* at 54-55. Parents claimed the visits were hard on them (and thus they weren’t as consistent as before) since termination was looming. *Id.* at 55, 229-30.

[10] When Mother wasn’t using drugs, the visits with the children went well. During relapses, however, Mother was “moody,” “uncooperative,” and “incoherent.” *Id.* at 70. Mother visited the children on August 26, two days after the hearing. At the end of the visit that day, Ja.R. told Mother no, at which point Mother “popped [her] in her mouth.” *Id.* at 107. When the visitation supervisor told Mother she could not “hit in the face,” Mother responded that she could because she was Ja.R.’s mother. *Id.* Sometime in 2020, DCS had considered unsupervised visits, but then Parents relapsed. Parents were told that if they had “ten clean screens,” they could have unsupervised visits with the children. *Id.* at 71. Parents failed to achieve that and therefore never advanced past supervised visits.

[11] Domestic violence was another big issue for Parents. Parents had a “[v]olatile” relationship marked by physical and verbal abuse. *Id.* at 66. They had “several bouts” of domestic violence, and service providers noticed bruises on Mother at various times. *Id.* at 67-68. Because of Parents’ domestic-violence issues, they were no longer allowed to visit the children together. The domestic-violence issues also impeded Mother’s progress. For example, Mother was doing well in early 2021 (she had gotten a driver’s license and a job). However, when Parents engaged in another domestic-violence incident later that spring, Mother’s progress started to “unravel.” *Id.* at 95. Although Parents were ordered to complete domestic-violence counseling after Father’s arrest in December 2020, neither Mother nor Father completed it. Mother alleged she had started working with a domestic-violence counselor about a month before the termination hearing. *Id.* at 32-34. Father said he had taken only “a few classes.” *Id.* at 224.

[12] Family Case Manager (FCM) Alexandra Sharar testified that throughout the life of the case, Parents “had multiple providers for the same service due to either being unsuccessfully discharged and/or their refusal to participate.” *Id.* at 156. During FCM Sharar’s time on the case, Mother and Father “minimally” participated in services and didn’t complete any. *Id.* at 167. Mother was unsuccessfully discharged from two home-based case managers and two domestic-violence providers and left halfway through a substance-abuse assessment in June 2021. Father had completed a parenting assessment and Father Engagement.

- [13] FCM Sharar believed termination was in the children’s best interests because Parents couldn’t provide a safe and stable living environment free from substance abuse and domestic violence. She said Parents had “ample opportunity” to remedy the reasons for the children’s removal but failed to do so. *Id.* at 172. She believed giving Parents more time would only harm the children, particularly their mental health. *Id.* at 178.
- [14] Guardian ad litem (GAL) Shirley Perez testified Parents’ progress in services was “[v]ery minimal.” *Id.* at 206. She highlighted that Parents still had domestic-violence issues and it was “unknown” whether they were using drugs since they weren’t screening anymore. *Id.* at 209. GAL Perez never recommended that the children be returned to Parents since Parents had not completed their services or “gone beyond supervised visits.” *Id.* at 208. She believed termination was in the best interests of the children. She said more time wouldn’t help because they already had three years and plenty of chances. *Id.* at 209.
- [15] In March 2022, the trial court entered an order terminating Mother’s and Father’s parental rights.
- [16] Mother and Father now separately appeal.

Discussion and Decision

- [17] When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind.

2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[18] A petition to terminate parental rights must allege, 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.*, 989 N.E.2d at 1231. If the court finds the allegations in a petition are true, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

I. Findings of Fact

[19] Father challenges some of the trial court’s findings. Findings are clearly erroneous only when the record contains no evidence to support them, either directly or by inference. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*.

[20] Father first challenges Finding 31:

31. Father has completed father engagement and a parenting assessment. He has not completed substance abuse services, dual diagnosis, or domestic violence counseling.

Appellants’ App. Vol. II p. 28. Father claims this finding is clearly erroneous because the evidence shows he “completed his dual diagnosis assessment and worked with a recovery coach for three (3) months before the coach left the agency” and that he was getting treatment for his opioid addiction at a suboxone clinic. Father’s Br. p. 21.

[21] Father was ordered to complete a substance-abuse assessment in Ju.R.’s case in January 2019, but he didn’t complete it. However, in December 2019, Father was ordered to complete a dual assessment (which included a substance-abuse assessment) in Ja.R.’s case, and Father completed it in January 2020. As a

result of the assessment, Father had to participate in therapy, parenting education, and recovery-coach services. Father only “briefly” followed the recommendations of the assessment. Tr. Vol. II p. 157. He participated in recovery-coach services for about two months and then stopped.

[22] At the termination hearing, Father admitted that “the only successful completion” he had was Father Engagement. *Id.* at 222. He said he got substance-abuse treatment at a suboxone clinic, but it wasn’t through DCS. Finally, Father acknowledged he was ordered to complete domestic-violence counseling but said he only “did a few classes.” *Id.* at 224. While the record shows Father participated in other services, he did not **complete** them. Finding 31 is not clearly erroneous.

[23] Father next challenges Findings 96 and 97:

96. The conditions that led to the [c]hildren’s removal or placement and retention outside the home of Father are his problems with substance abuse, his continued insecurity with employment and housing, and his continued involvement in domestic violence.

97. These conditions have not been remedied, and it is highly probable that these conditions will not be remedied, even if Father was given additional time to remedy the conditions.

Appellants’ App. Vol. II p. 32. Father says portions of these findings are clearly erroneous because Father remedied some conditions, specifically, housing and employment. Although the record shows Father had moved into Mother’s

apartment, the record also shows Mother and Father had made inconsistent statements about their housing, including that they were living with family members. This made it hard for DCS to know where they were living. As for employment, Father testified he received “unemployment” for being laid off during COVID (but didn’t say how long the benefits lasted) and that he had side jobs (but didn’t provide any details). Tr. Vol. II p. 227. Even assuming Father made progress in housing and employment, the record reflects “insecurity” in both. These findings are not clearly erroneous.²

II. Conclusions

A. Conditions Remedied

[24] Parents challenge the trial court’s conclusion that there is a reasonable probability the conditions resulting in the children’s removal or the reasons for placement outside the home will not be remedied.³ In making this determination, the trial court engages in a two-step analysis. First, the court

² Father challenges other findings, but as the State points out, they are really challenges to the trial court’s conclusions. This issue is addressed in the next section.

Mother also says she is challenging several of the trial court’s findings. Although she gives the finding numbers, she doesn’t address them individually. As the State points out, most of Mother’s arguments are really challenges to the court’s conclusions. To the extent that Mother points out contradicting evidence presented at trial, she is asking us to reweigh the evidence, which we don’t do.

³ Parents also challenge the trial court’s conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to the children’s well-being. But because we affirm the court’s conclusion that there is a reasonable probability Parents will not remedy the conditions that resulted in the children’s removal and continued placement outside the home, we need not address this alternate conclusion. See *In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (noting Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires the trial court to find only one of the elements), *trans. denied*.

must determine what conditions led to the child's placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The court must judge the parent's fitness to care for her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[25] Ju.R. was removed from Parents in 2018 because they were homeless and struggled with substance abuse. Ja.R. was removed from Parents in 2019 because Parents had failed to engage in the services ordered in Ju.R.'s case, parenting time with Ju.R. had been suspended, and Parents continued to use drugs. At the termination hearing in 2021, things hadn't improved much despite the provision of many services. A couple of months before the hearing, Parents stopped random drug screens altogether, believing they weren't necessary since they were going to lose their children anyway. As a result, DCS didn't know whether Parents, both addicts, were using drugs. Parents also missed visits with the children, claiming the visits were hard on them since they were going to lose their children anyway. Father, who had always been inconsistent, missed visits for months at a time, including the three weeks before the hearing. Mother missed several weeks that summer and a visit the day before the hearing. She also hit one of her children in the mouth at a visit just a couple of days later. Critically, Parents couldn't move past supervised visits. In addition, Parents had a volatile relationship marked by continuing episodes of domestic violence.

Parents, however, downplayed the issues and didn't complete domestic-violence counseling.

[26] The record shows that despite three years of DCS involvement, Parents had completed very few services and were minimally participating at the time of the termination hearing. This is so even though termination of their parental rights was at stake. Believing termination was inevitable, Parents essentially gave up rather than fight for their children. The evidence supports the trial court's conclusion that Parents' habitual conduct shows there is a reasonable probability they will not remedy the conditions that resulted in the children's removal and continued placement outside the home.

B. Best Interests

[27] Parents next challenge the trial court's conclusion that termination is in the children's best interests. Deciding whether termination is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (quotation omitted). The court must look at the totality of the evidence and subordinate the parent's interests to those of the child. *Id.* Central among these interests is the child's need for permanency, as the child cannot wait "indefinitely." *Id.* In addition, a recommendation to terminate parental rights by both the case manager and child advocate, together with evidence the conditions resulting in removal or the reasons for placement outside the home will not be remedied, is enough 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.

[28] Both FCM Sharar and GAL Perez testified termination is in the best interests of the children given Parents' substance-abuse and domestic-violence issues and failure to complete services, including missed visits and drug screens. Although it was undisputed Parents loved their children, they were never able to prioritize them over their own issues. Meanwhile, the children had been in the same foster homes for about two years and were bonded with their foster families, who wanted to adopt them.⁴ Although the children did not live together, the foster families wanted to maintain their "sibling bond." Tr. Vol. II p. 179. The evidence supports the trial court's conclusion that termination is in the best interests of the children.⁵

III. Continuance

[29] Father contends the trial court erred in denying his motion to continue, which in turn violated his due-process rights. "Generally speaking, a trial court's decision to grant or deny a motion to continue is subject to abuse of discretion review." *In re K.W.*, 12 N.E.3d 241, 243-44 (Ind. 2014). "An abuse of

⁴ Parents point out that Ju.R. had several foster homes before his current placement. While this is true, he had been in the same foster home for two years by the time of the termination hearing.

⁵ Mother challenges the trial court's conclusion that there is a satisfactory plan for the children's care and treatment. DCS's plan was for the children to be adopted by their current foster families. Adoption is a satisfactory plan. See *In re A.S.*, 17 N.E.3d 994, 1007 (Ind. Ct. App. 2014) ("[W]e have previously held that a plan is satisfactory, even if the plan is for the children to have separate adoptive homes."), *trans. denied*. Mother's challenge therefore fails.

discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion.” *Id.* at 244; *see also* Ind. Trial Rule 53.5.

[30] Father has not shown good cause for granting the motion. It is undisputed Father had notice of the hearing. Father didn’t tell his attorney he had to work so that his attorney could request a continuance in advance. Instead, Father just didn’t show up. When asked about it, Mother claimed Father was at work. But Father never presented any evidence that he worked that day or couldn’t get off work. Instead, Father testified he received unemployment benefits and did some side jobs. As the State points out, Father’s failure to appear on the first day of the hearing matched his actions leading up to termination, “disregard of the importance of his [c]hildren.” Appellee’s Br. p. 37. The trial court did not abuse its discretion, much less violate Father’s due-process rights, when it denied his motion to continue made right before the hearing.

[31] Affirmed.

Crone, J., and Altice, J., concur.