

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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

A.V. and C.V. (Minor Children)

and

T.V. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

August 9, 2022

Court of Appeals Case No.  
22A-JT-518

Appeal from the Clark Circuit  
Court

The Honorable Vicki L.  
Carmichael, Judge

Trial Court Cause Nos.  
10C04-2110-JT-42, 10C04-2110-  
JT-43

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*Appellee-Petitioner.*

**Altice, Judge.**

### **Case Summary**

- [1] T.V. (Father) appeals the involuntary termination of his parental rights to his minor children A.V. and C.V. (collectively, Children). Father challenges the sufficiency of the evidence supporting the termination.
- [2] We affirm.

### **Facts & Procedural History**

- [3] A.V. and C.V. were born to B.H. (Mother) and Father in June 2013 and May 2015, respectively. Mother also has a younger child, Z.H., born in May 2019. At all relevant times, Children were in the care and custody of Mother. Due to Mother's drug use, they were the subjects of a prior CHINS adjudication, which resulted in their removal from Mother's home from about March to December 2018. Following a successful trial home visit with Mother, that CHINS case was closed in May 2019.

- [4] On February 5, 2020, Children were removed from Mother’s care pursuant to an emergency custody order. This resulted from the discovery of fractures to nine-month-old Z.H.’s leg, which medical experts opined were “highly concerning for inflicted physical abuse” and not consistent with Mother’s story. *Appellee’s Appendix* at 17. Father’s whereabouts at the time were unknown, but it was later determined that he was incarcerated in the Clark County Jail, where he remained until May 2020. Children were placed in foster care.
- [5] On February 6, 2020, the Indiana Department of Child Services (DCS) filed petitions alleging that Children were CHINS. Mother later admitted that Children were CHINS and, at a factfinding hearing on September 24, 2020, at which Father appeared, Children were adjudicated CHINS. With respect to Father, the court found that he lived at a home owned by his grandmother, which lacked running water and was unsuitable for Children, was currently on criminal probation, and had never had custody of either child.
- [6] On October 29, 2020, the court conducted the dispositional hearing, at which Father did not personally appear but was represented by appointed counsel. Pursuant to the written dispositional and participation orders, issued shortly thereafter, Father was ordered to, among other things, contact the DCS family case manager (FCM) weekly, secure and maintain suitable/safe/stable housing and a legal/stable source of income, follow all terms of probation currently ordered, and complete substance use, parenting, and psychological assessments.

- [7] Throughout the CHINS proceedings, Father was noncompliant with reunification services. He did not stay in contact with the FCMs, was in and out of jail, never visited Children, did not maintain suitable housing or stable income, and did not complete the court-ordered assessments. Due to Father's (as well as Mother's) failure to make sufficient progress toward reunification, the trial court changed the plan to adoption at a permanency hearing on July 8, 2021, which Father did not attend. The court's written order was entered on September 19, 2021.
- [8] Thereafter, on October 15, 2021, DCS filed the instant petitions for the involuntary termination of the parent-child relationship. At some point before the factfinding hearing on the termination petitions, Mother executed consents for Children's foster parents to adopt them. Accordingly, the factfinding hearing, held on January 4, 2022, addressed only the involuntary termination of Father's relationship with Children.
- [9] Delanie Jackson, who was the FCM until August 2021, testified that Father did not participate in any reunification services in the approximately eighteen months she was working on the case. FCM Jackson explained that Father was often "hard to locate" and did not maintain contact with her or visit Children even when he was out of jail. *Transcript* at 16. FCM Jackson testified that she went to Father's home several times but, even when Father answered, he never allowed her inside and would only speak with her at the door. Father also refused to provide her with a correct phone number, telling her to just come by the house. Due to Father's lack of engagement and the significant bond

Children developed with their foster parents, FCM Jackson recommended termination of parental rights in the summer of 2021.

[10] In August 2021, Tenae Edwards took over as FCM and, shortly thereafter, visited Father in jail to introduce herself and update him on the CHINS case, which was moving toward termination. Father was released from jail in late October, and FCM Edwards attempted to call him on November 2 at a number provided to her. She left a voicemail message for him. Father did not return the call until November 17. FCM Edwards then informed Father that the initial termination hearing had been held November 9 and confirmed that he had spoken with his attorney and knew of the factfinding hearing, scheduled for January 13, 2022. Father indicated that he “wanted to start up services,” and FCM Edwards advised him to talk with his attorney and then follow up with her. *Id.* at 27. Father never called FCM Edwards back.

[11] FCM Edwards testified that, at the time of the factfinding hearing, Children had been in foster care for twenty-three months – twenty-two of those months with their current foster parents who wished to adopt.<sup>1</sup> FCM Edwards described Children’s foster parents as “some of the best foster parents that I’ve actually had the chance to know.” *Id.* at 29. FCM Edwards opined that

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<sup>1</sup> Children had been placed with these same foster parents for nearly six months during the 2018 CHINS case.

termination of parental rights was in Children's best interests and noted that Children's relationship with Father was "really nonexistent." *Id.* at 32.

[12] A.V.'s clinical therapist testified that A.V. has a "very strong relationship" with her foster parents and does not really know Father that well. *Id.* at 41. The therapist opined that "permanency is in [A.V.'s] best interest." *Id.* at 44. Similarly, C.V.'s therapist testified that C.V. required structure, stability, and permanency in order to thrive.

[13] Children's foster mother testified that adoption proceedings had already been commenced and that Children were "doing really great," thriving at school and at home with the help of therapy. *Id.* at 54. She indicated that they speak of Father "on rare occasions" and that, since March 2020, their only contact with him had been two phone calls. *Id.* at 55. The last call was on January 4, 2021, which had to be cut short because Father was making inappropriate comments about Mother.

[14] During his testimony, Father confirmed that he lived with his elderly grandmother in her home, which was not currently suitable for Children. Father also indicated that he was currently unemployed but that he had a "start date with a company called Kinko January 15<sup>th</sup>." *Id.* at 60. Regarding his lack of visits with Children over the preceding twenty-three months, Father blamed "Covid and the misunderstandings and changes like phone numbers and employments between me and the social workers and the foster parents and me also being incarcerated multiple times." *Id.* at 61. He testified that he had been

incarcerated “for the better half of every year” since Children’s removal, “sporadically throughout the year here and there.” *Id.* at 61, 67.

[15] The trial court took the matter under advisement and then issued its order terminating Father parental rights to Children. Father now appeals. Additional information will be provided below as needed.

### **Discussion & Decision**

[16] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019), *trans. denied*. In deference to the trial court’s unique position to assess the evidence, we will set aside its judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.* at 1231. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re R.S.*, 56 N.E.3d at 628.

[17] We recognize 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.” *In re J.W., Jr.*, 27 N.E.3d 1185, 1187-88 (Ind. Ct. App. 2015), *trans. denied*. Although parental rights are of constitutional dimension, the law provides for the termination of these rights when parents are unable or

unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re J.W., Jr.*, 27 N.E.3d at 1188.

[18] Before an involuntary termination of parental rights may occur in Indiana, DCS is required to allege and prove by clear and convincing evidence, among other things, that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[19] Father initially challenges the trial court's conclusion that there is a reasonable probability that the conditions that resulted in Children's removal or continued placement outside his home would not be remedied. In making this conclusion, the trial court relied on the following findings of fact:



26. During the CHINS cases, [Father]:

- a. Failed to maintain suitable housing;
- b. Failed to maintain a stable and adequate source of income;
- c. Failed to participate in a meaningful way in reunification services;
- d. Failed to maintain a meaningful relationship with the children through consistent visitation;
- e. Failed to cooperate with DCS and service providers.

27. During the CHINS case, [Father] was incarcerated for periods of time which negatively impacted his progress and his relationship to the children.

28. At the time of the termination hearing:

- a. [Father] lacks adequate housing. He continues to live with his grandmother. [Father] testified that repairs were needed to the home before the children could live there.
- b. [Father] does not have a legal source of income. Although he testified that he planned to begin work soon after the termination hearing, [Father] has had enough time to find gainful employment and to demonstrate a[n] ability to provide sufficient financial security for the children – but he has failed to do so.
- c. [Father] has failed to participate in the court-ordered services that would have helped him in parenting and assisted him in obtaining housing and employment.
- d. [Father] has ultimately failed to demonstrate the ability to provide the children with a safe and stable home.

29. The children have remained outside the home for approximately twenty-three (23) months.

30. Due to the lack of parental progress, the CHINS cases are no closer to reunification now than when they opened in February 2020.

*Appellant's Appendix at 73-74*

[20] Father challenges only one of the findings – Finding 28(b) – as not being supported by the evidence. Specifically, he contests the portion indicating that he did not have a legal source of income at the time of the termination hearing. Father's own testimony, however, supports this finding. That is, he expressly testified that he was not currently employed. Regarding past work, sometime before his recent incarceration that ended more than two months before the hearing, Father testified: "Last year I was working with a company called Jones Group and I do a lot of under the table work. Not necessarily under the table but tax free and paid in cash." *Transcript* at 64. The challenged finding is not clearly erroneous. *See D.C. v. J.A.C.*, 977 N.E.2d 951, 953 (Ind. 2012) ("Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.").

[21] Additionally, Father argues that the findings of fact set out above do not support the court's ultimate conclusion that the conditions resulting in Children's placement outside his home for twenty-three months were not likely to be remedied. We cannot agree.

[22] In making a determination regarding the probability that conditions will change,

the court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. Due to the permanent effect of termination, the trial court also must evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. The statute does not simply focus on the initial basis for a child's removal for purposes of determining whether a parent's rights should be terminated, "but also those bases resulting in the continued placement outside the home." *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. A court may properly consider 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. Moreover, a trial court "can reasonably consider the services offered by the [DCS] to the parent and the parent's response to those services." [*McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003)].

*In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013) (some citations omitted).

[23] Here, the court's findings of fact amply support its conclusion that the conditions were unlikely to change. Throughout the nearly two years of the CHINS proceedings, Father did not maintain suitable housing or stable income, did not visit with Children, and failed to meaningfully participate in reunification services or cooperate with DCS. Father was also in and out of jail

during this time.<sup>2</sup> Though out of jail for over two months before the termination hearing, Father had not started working by the time of the hearing, did not have suitable housing for Children, and still had not participated in court-ordered services.

[24] In sum, Father failed to demonstrate any ability to provide Children with a safe and stable home despite nearly two years of available reunification services, and he was no closer to reunification than when Children were removed. Moreover, his assertion that the trial court “focus[ed] almost exclusively on [his] historical failures” is without merit. *Appellant’s Brief* at 14. As already noted, the findings reveal that at the time of the termination hearing Father was unemployed, living in unsuitable housing, and noncompliant with court-ordered services. *Cf. In re C.M.*, 960 N.E.2d 169, 175 (Ind. Ct. App. 2011) (termination reversed where trial court made no findings regarding Mother’s fitness at the time of the termination hearing despite Mother’s uncontradicted testimony that she had a current source of income and suitable housing and was in intensive substance abuse treatment).

[25] Finally, we address Father’s brief argument related to Children’s best interests. He argues that the fact Children are in a stable, loving, preadoptive foster home,

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<sup>2</sup> As Father notes, “incarceration is an insufficient basis for terminating parental rights.” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 643 (Ind. 2015). But Father’s parental rights were not terminated in this case based on his stints in jail; they were terminated because he made no meaningful progress toward reunification. *Cf. id.* at 643-44 (termination reversed where, despite being incarcerated, father made “extensive efforts to better himself by learning parenting skills, addressing his problems with substance abuse, and establishing a bond with both of his children”).

where they are thriving, is not sufficient to trump his constitutional right to a relationship with his children.

[26] We agree with the general principle that “a parent’s constitutional right to raise his or her own child may not be terminated solely because there may be a better home available for that child.” *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. In this case, however, Father’s rights were not terminated on this basis alone. Rather, the trial court made extensive findings regarding the best-interests determination and considered the totality of the circumstances, including Father’s failure to make even minimal progress in nearly two years, Children’s lack of an emotional attachment with Father, Children’s bond with their foster parents, and the recommendations of the CASA and FCM Edwards. *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019) (holding that trial courts must look to the totality of the evidence in making this determination and subordinate the parents’ interests to those of the children, with the children’s need for permanency being a central consideration). After nearly two years of waiting, the trial court observed that Children needed stability and consistency, which Father had been unwilling or unable to provide, and that Children should not be required to wait indefinitely for Father to repair his home, establish stable income, or comply with reunification services. *See id.* (“Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.”) (internal quotation marks

omitted). The trial court's conclusion that termination of parental rights is in Children's best interests is not clearly erroneous.<sup>3</sup>

[27] Judgment affirmed.

Vaidik, J. and Crone, J., concur.

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<sup>3</sup> Father does not challenge the trial court's determinations that DCS has a satisfactory plan for Children's care and treatment following termination of parental rights or that they had been removed from Father's care for more than six months under a dispositional decree.