

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-  
Child Relationship of:

J.R., Sha.C., and Shan.C.  
(Minor Children)

and

S.R. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

February 15, 2023

Court of Appeals Case No.  
22A-JT-2207

Appeal from the Hancock Circuit  
Court

The Honorable R. Scott Sirk,  
Judge

Trial Court Cause No.  
30C01-2202-JT-39  
30C01-2202-JT-40  
30C01-2202-JT-41

**Memorandum Decision by Judge Mathias**  
Judges May and Bradford concur.

**Mathias, Judge.**

[1] S.R. (“Father”) appeals the Hancock Circuit Court’s termination of his parental rights over his minor children, J.R., Sha.C., and Shan.C. (“Children”).<sup>1</sup> Father raises three issues for our review:

1. Whether the Indiana Department of Child Services (“DCS”) failed to make reasonable efforts to preserve the family in violation of his due process rights.
2. Whether the conditions that resulted in the Children’s removal from Father’s care were likely to be remedied.
3. Whether DCS established a satisfactory plan for the Children’s care and treatment.

[2] We affirm.

**Facts and Procedural History**

[3] Father and J.C. (“Mother”) (collectively, “Parents”) have three children together: J.R., born July 30, 2009; Sha.C., born March 4, 2012; and Shan.C., born April 19, 2015. In May 2018, DCS received a report that Father and Mother had been arrested and that they had committed “criminal activity” in

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<sup>1</sup> S.R. is the father of J.R., and he is the alleged father of the other two children. There is another alleged father of Sha.C., and Shan.C. who has not been identified. J.C. (“Mother”) does not participate in this appeal.

front of the Children. Tr. p. 16. A DCS assessment worker interviewed the Children and learned that the family was homeless and were living out of a U-Haul van. Parents also had been transporting the Children in the van without car seats or proper restraints. J.R. and Sha.C. reported that they had not been in school “for a couple [of] months” and that Parents used marijuana. *Id.* DCS removed the Children from Parents’ care the same day.

[4] On June 1, DCS filed petitions alleging the Children to be Children in Need of Services (“CHINS”) based on Parents’ arrests, the family’s homelessness, and Parents’ drug use in front of the Children. During a factfinding hearing on August 8, Father admitted that: he was unable to provide stable housing for the Children; he had transported the Children without proper safety restraints; he had pending criminal charges; and that the Children needed services that he would not provide without the coercive intervention of the trial court. Accordingly, the trial court ordered Father to cooperate with the family case manager. The trial court also specifically ordered Father to maintain stable, safe, and suitable housing; not consume illicit substances; obey the law; complete a parenting assessment; participate in a homebased counseling program with the Children; participate in supervised visitation with the Children; and submit to random drug screens.

[5] Father failed to appear at a review hearing in November. The trial court found that Father’s whereabouts were unknown; that he had an active warrant for his arrest; and that he had not “made any improvements in [his] ability to fulfill [his] parental role.” Appellant’s App. Vol. 2, p. 6.

[6] The following year, on October 23, 2019, the court held a review hearing and found that Father had “partially complied with the case plan”; Father “had begun working with Fatherhood Engagement and was pursuing a GED”; Father was “engaged in some visitation” with the Children; but Father “had not begun his substance abuse assessment, home based casework, or individual counseling.” *Id.* at 7. Father was subsequently “discharged from Fatherhood [E]ngagement due to a lack of communication[.]” *Id.* And Father did not thereafter maintain contact with DCS. The Children, meanwhile, were doing well in foster placement with their aunt.

[7] On February 2, 2022, DCS filed petitions to terminate Father’s parental rights over the Children. Neither Father nor Mother appeared at the fact-finding hearing on those petitions. DCS presented testimony that Father had five outstanding warrants out for his arrest at that time; Father had not seen the Children in more than seven months; and Father had ceased all communication with DCS and service providers.

[8] Following the fact-finding hearing, the court found in relevant part as follows:

17. Father made some progress towards remedying the situation which led to the removal of the child from his care.

18. Father continued to have interactions with Law Enforcement leading to the issuance of multiple warrants for his arrest.

19. Father also stopped communicating with the Department and providers.

20. At the time of the termination hearing, it had been a significant period of time since the parents had stopped communicating with the Department, Service Providers, or the child[ren] themselves.

21. The parents['] repeated cycles of ceasing services, and failure to maintain contact with the Department or the children leads to the inescapable conclusion that there is no reasonable likelihood that the parents will correct the circumstances which led to the children's removal from the home.

22. DCS'[s] plan for [the] Child[ren] is that [they] be adopted, [and] this plan is satisfactory for the Child[ren's] care and treatment.

23. DCS believes it is in the best interests of the Child[ren] to be adopted.

*Id.* at 9. The court then terminated Father's parental rights over the Children. This appeal ensued.

## Standard of Review

[9] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court's decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* 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.*

[10] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *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; 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.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court’s termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[11] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2021). We need only discuss two of those elements raised by Father in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside of Father’s home will not be remedied; and (2) whether DCS established a satisfactory plan for the care and treatment of the Children. *I.C. § 31-35-2-4(b)(2)(B)(i) & (D)*.

[12] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child’s very survival. *Bester*, 839 N.E.2d at

148. It is instead sufficient to show that the child’s emotional and physical development are put at risk by the parent’s custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

## 1. Due Process

[13] Father first contends that his due process rights were violated by DCS’s alleged failure to provide certain reunification services. However, Father has procedurally defaulted this claim by failing to raise his due process concerns in the trial court. See *In re N.G.*, 51 N.E.3d 1167, 1173 (Ind. 2016). And, on appeal, Father does not assert that his claim amounts to fundamental error. Father has thus failed to preserve this issue for appellate review. *Bowman v. State*, 51 N.E.3d 1174, 1179 (Ind. 2016).

[14] Waiver notwithstanding, the record shows that DCS did not violate Father’s due process rights. Termination of parental rights is a “unique kind of deprivation,” and thus, when DCS seeks to terminate parental rights, it must do so in a manner that comports with due process. *In re C.G.*, 954 N.E.2d 910, 917 (Ind. 2011) (quoting *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 27 (1981)). While the phrase “due process” has never been defined, it “embodies a requirement of fundamental fairness.” *Id.* (quotation omitted). DCS specifically must make “reasonable efforts” to reunify the family. *In re T.W.*, 135 N.E.3d 607, 615 (Ind. Ct. App. 2019), *trans. denied*. What constitutes “reasonable efforts” will vary

from case to case. *Id.* Here, DCS made reasonable efforts to reunify Father and the Children, but those efforts were unsuccessful because of Father's actions.

[15] To the extent that Father felt that DCS's support was inadequate, it was his responsibility to request additional assistance. See *Prince v. Dep't of Child Servs.*, 861 N.E.2d 1223, 1231 (Ind. Ct. App. 2007). Indeed, "a parent may not sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting." *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Further, DCS offered other services to Father that he did not complete successfully. Thus, even if Father had not waived this issue for our review, Father has not established that DCS violated his due process rights. Cf. *T.W.*, 135 N.E.3d at 618 (finding a parent's due process rights were violated where parent asked for additional assistance and DCS failed to provide the parent "with the support and services he so desperately needed").

## 2. Reasons for the Children's Removal

[16] Father contends that DCS failed to prove that there is a reasonable probability that the conditions that resulted in the Children's removal and continued placement outside of his home will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent's fitness at the time of the

termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent's recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child's continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[17] Here, the Children were removed from Father's care due to his criminal activity in front of the Children, the family's homelessness, and Father's arrest. During the four years that this case was pending, Father continued to engage in criminal activity and, while he initially showed some engagement in services, he was ultimately unsuccessful in all services and stopped communicating with DCS. Indeed, at the time of the final hearing, DCS could not locate Father, and he did not appear at the hearing. Most significant is that Father has not seen the Children since November 2021.

[18] Still, Father asserts on appeal that he suffers from an intellectual disability and that, had his "disability been accommodated, Father could have remedied the stated reasons for removal" of the Children. Appellant's Br. p. 11. But Father did not present evidence to the trial court to support his assertion that he has an intellectual disability. At the final hearing, Jamie Haddix, a DCS permanency worker, testified that he had learned that Father received Social Security Disability benefits, but when Haddix asked Father about the reason for those benefits, Father responded that he had "anger issues." Tr. p. 33. And Father

refused to sign a release to permit DCS to obtain records from the SSA directly. Haddix testified that DCS “wanted to know what exactly was going on so [that DCS] could put services in to help him.” *Id.* Father cannot now complain that DCS denied him appropriate services.

[19] Father’s arguments on appeal simply seek to have this Court reweigh the evidence, which we will not do. The trial court’s finding that the conditions that resulted in the Children’s removal will not be remedied are supported by the record. We therefore affirm the trial court’s judgment on this issue.

### 3. Satisfactory Plan

[20] Last, we address Father’s argument that DCS failed to show a satisfactory plan for the care and treatment of the Children. On this issue, DCS is only required to establish that “there is a satisfactory plan for the care and treatment of the child” in termination proceedings. *In re B.M.*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009) (citation omitted). And this Court has held that adoption is a “satisfactory plan” for the care and treatment of a child under the termination of parental rights statute. *Id.* (citation omitted). Here, the court found that DCS had a satisfactory plan in place for the care and treatment of the Children because DCS intended to have the Children adopted.

[21] Father argues that DCS failed to establish a satisfactory plan of adoption because DCS did not show that there is an adoptive family in place for the Children. But Father’s argument is contrary to law. We have long recognized that DCS is not required to establish at a termination hearing that there is “a

specific family in place to adopt” a child. *Lang v. Starke Cnty. Ofc. of Fam. & Child.*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*. We therefore again affirm the trial court’s judgment.

## **Conclusion**

[22] For all of the above stated reasons, we affirm the trial court’s termination of Father’s parental rights.

[23] Affirmed.

May, J., and Bradford, J., concur.