

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.



ATTORNEY FOR APPELLANT

Mark Small
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Natalie F. Weiss
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of S.L. (Minor Child);

L.L. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

June 15, 2022

Court of Appeals Case No.
22A-JT-279

Appeal from the Owen Circuit
Court

The Honorable Kelsey B. Hanlon,
Judge

Trial Court Cause No.
60C02-2108-JT-146

Tavitas, Judge.

Case Summary

- [1] L.L. (“Father”) appeals the termination of his parental rights to S.L. (“the Child”). Father argues that the Owen County Department of Child Services (“DCS”) failed to present sufficient evidence to support the termination of his parental rights. Concluding that DCS presented sufficient evidence to support the termination of Father’s parental rights, we affirm.

Issue

- [2] Father raises one issue, which we restate as whether sufficient evidence supports the termination of his parental rights to the Child.

Facts

- [3] The Child was born in July 2010 to Father and K.S. (“Mother”).¹ Father has substance abuse issues and a lengthy criminal history. The Child was adjudicated a child in need of services (“CHINS”) in 2017 and 2019 due to substance abuse and domestic violence issues.
- [4] In June 2020, ten-year-old Child was living with Father, and the police were called to Father’s home on multiple occasions due to the Child’s behavior. DCS filed a third petition alleging that the Child was a CHINS, and DCS removed the Child from Father’s care and placed him in foster care.

¹ Mother did not participate in the CHINS proceedings or the termination of parental rights proceedings, and she does not participate in this appeal.

- [5] After a fact-finding hearing, the trial court found the Child to be a CHINS in August 2020. Specifically, the trial court found: (1) Father has been impaired by substance abuse in the presence of the Child and while Father was the Child's primary caregiver; (2) Father's substance abuse is impacting his ability to properly supervise and care for the Child; (3) Father has engaged in domestic violence in the presence of the Child; (4) Father has allowed the Child to "live in and visit homes where Father and others engaged in substance abuse" and the Child "has observed and handled drug paraphernalia"; (5) the Child has used tobacco products and inhaled vaporizers and has put a pipe used to ingest methamphetamine in his mouth. Appellee's App. Vol. II pp. 25-26.
- [6] In its dispositional order, the trial court ordered Father, in part, to: (1) maintain suitable housing and a source of income; (2) avoid the use, manufacture, trade, distribution, or sale of any illegal controlled substances and avoid the possession, use, or consumption of any illegal controlled substances in the home or in the presence of the Child; (3) avoid the consumption of alcohol; (4) obey the law; (5) participate in a substance abuse assessment and complete all treatment recommendations; (6) participate in home-based counseling; (7) participate in a parenting assessment and complete all recommendations; (8) submit to random drug screens; (9) participate in a psychological evaluation and complete all treatment recommendations; (10) avoid committing any acts of domestic violence; and (11) attend supervised visitations with the Child.
- [7] Despite Father's participation in some services, Father's substance abuse issues have persisted. Father has been diagnosed with stimulant use disorder,

amphetamine type, severe; cannabis use disorder, severe; and panic disorder. Father reports that he uses substances to “cope with his emotions and stressors.” Tr. Vol. II p. 48. Father participated in individual therapy, an intensive out-patient program, and an inpatient drug treatment program. Father, however, has not met his treatment goals. Father continues to abuse substances, and Father routinely tested positive for methamphetamine from June 2020 to May 2021.

- [8] Father was placed on probation in April 2021. Father was incarcerated for approximately thirty days in July 2021. Additionally, while on probation, the State has alleged that Father committed two new offenses—operating a vehicle while intoxicated and driving while suspended. Those alleged probation violations are pending.
- [9] Father attended supervised visits with the Child. Additionally, the foster parents invited Father to attend church with them on Sundays and have family dinner after the church service. The Child was hurt when Father did not appear, and the Child’s behavior would become “very erratic.” *Id.* at 78. Foster parents eventually stopped allowing Father to visit on Sundays because there were times they “could tell that [Father] was under the influence of something.” *Id.* On one occasion, Father was lethargic and kept falling asleep at the table.
- [10] In August 2021, DCS filed a petition to terminate Father’s parental rights. The trial court held a fact-finding hearing in November 2021. The trial court

entered findings of fact and conclusions thereon granting DCS’s petition to terminate Father’s parental rights. Father now appeals.

Analysis

[11] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dep’t. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *In re Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[12] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.² Here, the

² Indiana Code Sections 31-35-2-8, governing termination of a parent-child relationship involving a delinquent child or CHINS, provides as follows:

trial court entered findings of fact and conclusions thereon in granting DCS's petition to terminate Father's parental rights. We affirm a trial court's termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment. *Id.*

[13] Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

-
- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[14] Father challenges only the trial court’s finding that termination of Father’s parental rights is in the Child’s best interests. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child’s emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a “central consideration” in determining the best interests of a child. *Id.*

[15] The trial court found that termination of Father's parental rights was in the best interests of the Child. Specifically, the trial court found:

bb. Father has not established and maintained a pattern of sobriety.

cc. Respondent Father regularly tested positive for methamphetamine between June of 2020 and May of 2021.

dd. Were Father to fully reengage in services, Ms. Patrick, Father's therapist, recommends that Father complete an additional stay in inpatient rehabilitation before restarting Matrix IOP, individual therapy, and medication management.

ee. Despite being provide[d] services in three (3) separate CHINS cases since, the earliest of which was opened in May of 2017, Father has not adequately addressed his substance abuse issues. Father is presently recommended by his provider to effectively start over in services.

* * * * *

ii. Respondent Father loves the Child, and the Child loves Respondent Father.

jj. Father's substance use and criminal justice involvement have been emotionally harmful to the Child. Father makes promises to the Child that he does not keep.

* * * * *

nn. Neither Parent has addressed the safety concerns that led the Child's removal. . . . Father has not progressed past supervised

visitations and his life continues to lack stability due to substance abuse and criminal justice involvement.

* * * * *

qq. The uncertainty the Child faces about his future has been difficult for him to manage. It is not in the Child's best interest for this uncertainty to continue longer than necessary.

Appellant's App. Vol. II pp. 19-20. Father does not challenge any of the trial court's findings. *See, e.g., In re S.S.*, 120 N.E.3d 605, 611 (Ind. Ct. App. 2019) (“[S]ince Mother failed to specifically challenge any of the juvenile court's findings, we need only consider whether the findings support the juvenile court's conclusion.”).

[16] When the Child was removed from Father's care, Father was “overwhelmed” with the Child's behavior and dealing with the death of his older child.³ Tr. Vol. II p. 62. Despite numerous services over three CHINS proceedings, Father has been unable to adequately address his substance abuse issues. The Child has been diagnosed with Adjustment Disorder and Attention Deficit Hyperactivity Disorder (“ADHD”). The Child's impulsive behaviors in the home and at school have improved during his time in foster care; he is “more easily redirected”; and he is “more open to speaking about his emotions.” *Id.* at 66.

³ Father's older child died in December 2019.

[17] Both DCS Family Case Manager (“FCM”) Shelbi Hunter and the Court Appointed Special Advocate (“CASA”) recommended the termination of Father’s parental rights. FCM Hunter testified that she recommended the Child be adopted because the Child “needs a stable home environment where he has a sober caregiver that is able to be there for him.” Tr. Vol. II p. 35. FCM Hunter noted that, despite two prior CHINS cases, DCS was “continuing to see the same problems that we’ve seen in the previous cases with substance abuse and mental health that are not being remedied by services” *Id.* The CASA testified that she does not believe Father can provide the Child with a safe and stable home, and the CASA recommended that the Child be adopted by his foster parents. While it is clear that Father and the Child have a bond and love each other, given Father’s ongoing substance abuse issues, the trial court’s finding that termination of Father’s parental rights was in the Child’s best interests is not clearly erroneous.

Conclusion

[18] DCS presented sufficient evidence to support the termination of Father’s parental rights to the Child. Accordingly, we affirm.

[19] Affirmed.

Riley, J., and May, J., concur.