

## 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

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In the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of: D.A. (Minor  
Child),  
and

R.A. (Father),  
*Appellant-Respondent*,

v.

The Indiana Department of  
Child Services,  
*Appellee-Petitioner*.

March 22, 2021

Court of Appeals Case No.  
20A-JT-2058

Appeal from the Montgomery  
Superior Court

The Honorable Peggy Q. Lohorn,  
Judge

Trial Court Cause No.  
54D02-2004-JT-99

**Tavitas, Judge.**

## **Case Summary**

- [1] R.A. (“Father”) appeals the termination of his parental rights to his child, D.A. (the “Child”). After four CHINS proceedings involving the Child, the Montgomery County Department of Child Services (“DCS”) filed a petition to terminate Father’s parental rights, which the trial court granted. Father challenges the sufficiency of the evidence to support the termination of his parental rights. Finding that DCS presented sufficient evidence, we affirm.

## **Issue**

- [2] Father raises one issue, which we restate as whether DCS presented sufficient evidence to support the termination of Father’s parental rights.

## **Facts**

- [3] The Child was born in April 2012 to Father and B.T. (“Mother”).<sup>1</sup> The Child has been found to be a child in need of services (“CHINS”) four times as a result of her parents’ significant drug abuse issues and involvement with criminal activity.
- [4] The first CHINS proceeding was initiated shortly after the Child’s birth due to her parents’ drug use and domestic violence. The Child was placed with her

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<sup>1</sup> Mother consented to the Child’s adoption and is not a party to this appeal.

maternal grandfather, and Father struggled to address his substance abuse issues. In March 2013, Father and Mother divorced, and Father was granted custody of the Child with Mother having supervised parenting time. The CHINS proceeding was then dismissed.

[5] In September 2013, the Child was again found to be a CHINS. Father had allowed Mother to have unsupervised care of the Child despite Mother's continued methamphetamine use. Mother was arrested in a vehicle that contained a mobile methamphetamine lab, and the Child was also in the vehicle. The Child was placed with her paternal grandfather and paternal aunt. Father exercised extended visitations, and eventually the CHINS proceeding was discharged in May 2014.

[6] In February 2017, the Child was found to be a CHINS for a third time. Father was incarcerated, and Mother was continuing to abuse substances. The Child was initially placed with her maternal grandmother. Father later agreed to a custody modification to Mother, and the CHINS proceeding was dismissed in February 2019.

[7] The next month, Mother had a drug relapse and was arrested on a probation violation. At that time, Father was wanted on an arrest warrant. Father was also a party to another CHINS case regarding a second child, but Father was not participating in services in that case. The Child was placed in foster care with a distant relative, and in April 2019, DCS filed a fourth petition alleging that the Child was a CHINS. The Child was found to be a CHINS. At some

point, Father was arrested and later released on bond. He did not, however, participate in services while not incarcerated.

[8] On June 3, 2019, the State charged Father with domestic battery, a Level 6 felony. At that time, Father admitted to a DCS family case manager that he had been using methamphetamine. In June 2019, the State also charged Father with invasion of privacy, a Class A misdemeanor. The trial court held a dispositional hearing in June 2019, at which time Father was incarcerated. The trial court ordered Father, in part, to: (1) obey the law; (2) complete a substance abuse assessment and follow all treatment recommendations; (3) submit to random drug screens; and (4) attend all scheduled visitations with the Child.

[9] The Child's therapist, however, recommended that no visitations occur while the parents were incarcerated. Instead, the therapist recommended the exchange of letters between the parents and the Child. In March 2020, Father pleaded guilty to domestic battery, a Class B misdemeanor; invasion of privacy, a Class A misdemeanor; making a false sales document, a Level 6 felony, and driving while suspended, a Class A misdemeanor. Father was released from jail and entered a program at Home with Hope, a residential treatment facility for substance abuse.

[10] In April 2020, DCS filed a petition to terminate Father's and Mother's parental rights. Mother consented to the adoption of the Child, and a termination of parental rights hearing was held regarding Father's parental rights to the Child. DCS presented evidence that the Child struggles with lying, stealing, anger

management and tantrums, impulsivity, and relationships in school. She has been diagnosed with significant post-traumatic stress disorder and attention deficit hyperactivity disorder, and she requires extensive therapy and stability at home. At the time of the fact finding hearing, Father had completed programs in jail, completed a 120-day program at Home with Hope, and was continuing to reside at Home with Hope. Father was employed and was trying to save money to regain his driver's license. Father, however, had not seen the Child since her placement in foster care and admitted that he was unable to care for the Child at that time. The trial court granted the petition to terminate Father's parental rights to the Child. 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. Indiana Dept. of Child Services, Dearborn County Office*, 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 *Matter of 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.<sup>2</sup> Here, the trial court did enter 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 do not reweigh the evidence or 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,

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<sup>2</sup> Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (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.

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.
  - (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).

***A. Ind. Code 31-35-2-4(b)(2)(B) Findings***

[14] Father argues the evidence is insufficient to demonstrate 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.” I.C. § 31-35-2-4(b)(2)(B)(i). The trial court, however, did not make a finding regarding this factor.

[15] Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence of a reasonable probability that *either*: (1) the conditions that resulted in the Child’s removal or the reasons for placement outside the home of the parents will not be remedied; (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child; *or* (3) the Child has, on two (2) separate occasions, been adjudicated a CHINS. *See, e.g., Ma.H.*, 134 N.E.3d at 46 n.2. The trial court here made findings that the continuation of the parent-child relationship poses a threat to the well-being of the Child and that the Child has, on four separate occasions, been adjudicated a CHINS.

[16] DCS points out that it did not plead Indiana Code Section 31-35-2-4(b)(2)(B)(iii) regarding the multiple CHINS adjudications as a basis for termination in its petition for termination of parental rights. DCS notes that “an un-alleged statutory element cannot form a basis for the trial court’s termination judgment.” Appellee’s Br. p. 18 n.4 (citing *Matter of Bi.B.*, 69 N.E.3d 464, 468-69 (Ind. 2017)). The trial court, however, found that the continuation of the parent-child relationship poses a threat to the well-being of the Child. Father does not challenge this finding and, thus, has waived any argument regarding the sufficiency of the evidence to support this statutory



element. *See* Ind. Appellate Rule 48(A)(8)(a) (issue must be supported by cogent argument, including citations to the record and relevant case law).

[17] Waiver notwithstanding, the trial court’s finding that the continuation of the parent-child relationship poses a threat to the well-being of the Child is not clearly erroneous. It is well established that “a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *In re G.F.*, 135 N.E.3d 654, 661 (Ind. Ct. App. 2019). A parent’s “habitual pattern of conduct is highly relevant in determining whether the continuation of the parent-child relationship poses a threat to [a c]hild, as it suggests a substantial probability of future neglect or deprivation.” *Id.*

[18] Here, the trial court found:

[The Child] has suffered significant trauma, resulting in numerous mental health diagnoses, from her continual removal from her various homes because of her parent’s inability to provide her with a safe, nurturing home free of substance abuse. Despite attempts between 2012 and 2019 by the DCS to engage father in substance abuse treatment, as well as various services to assist him with understanding the grave danger to his child of toxic relationships, father continued to abuse drugs and allow mother access to the child. Although he occasionally engaged in treatment and met short term goals, he consistently reverted to drug use. Father also continually put his child in danger by permitting known drug users to care for her. Father has a significant history of criminal conduct that resulted in his inability to house, nurture or support his daughter.

[19] DCS presented evidence that Father has struggled with long-term substance abuse issues, an extensive criminal history, and involvement in toxic relationships. Father's criminal history includes convictions for possession of marijuana, a Class D felony, and driving while suspended, a Class A misdemeanor, in September 2010; driving while suspended, a Class A misdemeanor, in December 2012; unlawful possession of a syringe, a Level 6 felony, possession of marijuana, a Class B misdemeanor, and possession of paraphernalia, a Class C misdemeanor, in May 2018; making a false sales document, a Level 6 felony, driving while suspended, a Class A misdemeanor, battery, a Class B misdemeanor, and invasion of privacy, a Class A misdemeanor, in March 2020. We acknowledge and commend Father for the recent progress he has made in completing programs while incarcerated, completing the program at Home with Hope, finding employment, and dealing with his substance abuse issues. Father acknowledged, however, that he is currently unable to care for the Child. Tragically, this Child has not had the stability she requires. Given Father's history, it is unclear when, if ever, he would be able to care for the Child.

[20] The Child's multiple placements during the four CHINS proceedings and the Child's significant mental health issues are concerning. She has been diagnosed with post-traumatic stress disorder and attention deficit hyperactivity disorder. The Child is in therapy for lying, stealing, anger management and tantrums, impulsivity, and problems at school. The therapist testified that these behaviors

are common in children with post-traumatic stress disorder. Of particular importance, the CASA assigned to each of the Child's four CHINS cases testified:

[The Child] is an extremely fragile child emotionally. She's been through a great deal of trauma, almost an endless amount of trauma in her just little over eight years and she just I don't think she can endure another, she can't endure any [ ] more. It might take a childhood, you know, years for her to overcome what she's already endured and that is with the best of treatment, continued therapy with the kind of effort that [foster parents] are putting into this, the kind of stability she needs. Anything less than that is going to just I think be very, very detrimental. I mean, I have been a CASA for a great number of kids, I supervise children, you know cases and I honestly have not, other than children who have been so emotionally damaged who have to go into residential treatment, I've not seen a child who is so challenging on a day to day basis. It's remarkable and I've stated this several times. I think miraculous really that she was, that she's found [foster parents]. Just to illustrate, I think nobody could have done a better done [sic] than they are and still she's just making these little incremental improvements and that's what is going to take. It's that kind of effort is going to have to be given, that kind of patience, that kind of just day to day focus on her needs . . . , it's just a remarkable effort that they continue to want to do. So, . . . the risk of returning her to her father is just too high in my estimation for it to be in her best interest.

Tr. Vol. II p. 195. The CASA further testified that "it would be very damaging even to go through the process of reintroducing [Father] and having visits and working through building a bond again if that's possible to build a bond again and then something happens." *Id.* at 196. Such trauma would "be very detrimental to her." *Id.*

[21] Although Father has made recent progress, the Child has a significant need to avoid further instability in her life. This Child has been uprooted repeatedly her entire life. Under these circumstances, the trial court's conclusion that the continuation of the parent-child relationship poses a threat to the Child's well-being is not clearly erroneous.

### ***B. Best Interests***

[22] Next, Father challenges the trial court's finding that termination of Father's parental rights was in the Child's best interests. When determining what is in a child's best interests, trial courts may consider a variety of factors. *Matter of M.I.*, 127 N.E.3d 1168, 1171 (Ind. 2019). "To make this decision, trial courts must look at the totality of the evidence and, in doing so, subordinate the parents' interests to those of the children." *Ma.H.*, 134 N.E.3d at 49. "Central among these interests is children's need for permanency." *Id.* "[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification." *Id.*

[23] On this issue, the trial court concluded:

The Indiana Department of Child Services has shown by clear and convincing evidence that termination is in the best interest of [the Child]. This child's young life has been defined by placement after placement. Her exposure to drug use and dangerous surroundings have left her with significant mental and emotional damage. CASA Jane Christophersen said it best when she pointed out that [the Child] is in an extremely fragile emotional state after experiencing endless trauma in her eight (8) years. "She can't endure any [ ] more." With the best treatment,

it will take years to overcome her mental health issues. Anything less than what [foster mother] continues to do for [the Child] will be tremendously detrimental. Her father is actively addressing his addiction issues which have had a grave impact on [the Child]. He is to be commended for that. However, there is no evidence that he is able to address [the Child's] mental health needs.

Appellant's App. Vol. II pp. 237-38.

[24] The Child's therapist testified that the Child needs "stability and structure and consistency" in her life, including "not frequent changes in home settings, . . . having a set routine, having a consistent caregiver, . . . having her basic needs met and provided for her." Tr. Vol. II p. 50. The family case manager testified that the Child "needs a cycle of life that's not revolving around drugs or apparently being around involvement with crime. She needs stability and permanency with a home that will be able to take care of her until she's either ready to go to college or move on with her life." *Id.* at 175. The CASA also testified, as noted, that the Child is such an "extremely fragile child emotionally" that "she can't endure any[ ]more" trauma. *Id.* at 195.

[25] This Child has been deprived of a stable home, a consistent caregiver, and a life without trauma. Given these circumstances, the trial court's conclusion that termination of Father's parental rights was in the Child's best interests is not clearly erroneous.

## **Conclusion**

[26] Sufficient evidence supports the termination of Father's parental rights to the Child. Accordingly, we affirm.

[27] Affirmed.

Bailey, J., and Robb, J., concur.