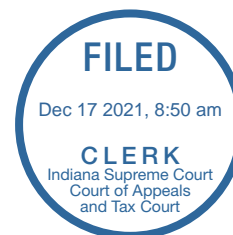


MEMORANDUM DECISION

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

Michael C. Price
Michael Price Law Office, P.C.
Zionsville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Katherine Ayer Cornelius
Robert J. Henke
Deputy Attorneys General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of:

Al.K, K.K., N.K. (Minor Children),

And

A.K. (Father),

Appellant-Respondent,

v.

Indiana Department of Child Services,

Appellee-Petitioner.

December 17, 2021

Court of Appeals Case No.
21A-JT-1018

Appeal from the Madison Circuit Court

The Honorable Thomas Clem,
Senior Judge

Trial Court Cause No. 48C02-2009-JT-164, 48C02-2009-JT-165,
& 48C02-2009-JT-166

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Respondent, A.K. (Father), appeals the trial court's termination of his parental rights to the minor children, N.K., Al.K, and K.K. (Children).
- [2] We affirm.

ISSUE

- [3] Father presents this court with one issue, which we restate as: Whether the Indiana Department of Child Services (DCS) presented sufficient evidence to support its petition to terminate the parent-child relationship.

FACTS AND PROCEDURAL HISTORY

- [4] Father¹ is the biological parent to N.K., born on January 1, 2014, Al.K., born on September 2, 2016, and K.K., born on October 28, 2017. Prior to the current proceedings, the State charged Father with criminal neglect of a dependent in 2007, related to his neglect of an older child he had with his wife, who is not Mother to Children. Furthermore, on January 15, 2018, Children

¹ Mother's parental rights to Children were terminated in the same order as Father's. Mother did not file a notice of appeal. Facts pertaining to Mother will be included in so far as necessary for Father's appeal. During the proceedings of this case, Mother and Father had another child, T.K., born on October 11, 2019 (Sibling), who is not part of this appeal but who is subject to a separate CHINS proceeding in Hancock County. Facts pertaining to Sibling and Sibling's CHINS case will be included if necessary for these proceedings.

were removed from Mother and Father (collectively, Parents) due to neglect but were returned to the home on September 20, 2018.

[5] On June 26, 2019, DCS found Children alone in a hotel room, covered with bruises. DCS removed Children from their Parents' care. The State of Indiana filed separate Informations against Mother and Father, with each Parent facing charges for three Counts of neglect of a dependent resulting in bodily injury, three Counts of battery on a person less than fourteen years old, and one Count of neglect of a dependent that endangered the dependent. The criminal court entered a pre-trial no-contact order, prohibiting all contact between Father and Children. The following day, on June 27, 2019, DCS filed its verified petition to adjudicate Children as Children in Need of Services (CHINS). That same day, the trial court conducted an initial hearing, which was only attended by Mother. Mother admitted that Children were CHINS.

[6] On July 24, 2019, the trial court held the dispositional hearing for Mother. Through a parental participation order, the trial court ordered Father to participate in individual counseling and follow all recommendations, to cooperate with homebased services, to complete a drug/alcohol assessment and follow all recommendations, to submit to random drug screens, to obtain and maintain legal employment and adequate housing, and to abstain from the use of illegal drugs. On November 6, 2019, the trial court conducted Father's dispositional hearing. The court ordered Father to participate in the plan for Children so he could provide them "with a clean home with appropriate supervision free from violence, illegal activity and substance abuse." (Exh. Vol.

p. 14). The trial court also mandated Father to “complete any and all services that he is able to while incarcerated.” (Exh. Vol. p. 15).

[7] Father was released from incarceration on December 18, 2019. While in custody, Father participated in the fatherhood engagement program and although he alleged to have completed other services available to him at the incarceration facility, he did not provide DCS with copies of completion of these services. On the day Father was released, the trial court ordered him to “commence the other services ordered in the Dispositional Decree soon.” (Appellant’s App. Vol. II, p. 21).

[8] On June 17, 2020, the trial court conducted a permanency hearing at which the court found that Father had not complied with Children’s case plan. The dispositional order clearly indicated that DCS had offered services to Father and that he was expected to complete counseling, homebased casework, fatherhood engagement, a substance abuse assessment and follow all recommendations, and to submit to random drug screens. Father completed three drug screens and had one no-show. Two screens tested positive for buprenorphine. Father never scheduled his intake at Aspire, a community mental health clinic, as he had been required to do.

[9] On October 8, 2020, DCS filed its verified petition for the involuntary termination of the parent-child relationship between Father and Children. On March 2 and April 27, 2021, the trial court conducted a hearing on DCS’s petition to terminate. During the hearing, the trial court heard and admitted

evidence regarding Parents' CHINS case in Hancock County involving Children's younger Sibling, born on October 11, 2019, who had been removed from Parents' care at the time of the initial hearing in the current Cause. During the termination hearing, evidence was received that Father had not been compliant with DCS's services during the CHINS proceedings. Although Father always participated in fatherhood engagement classes, he did not complete any other services.

[10] On April 30, 2021, the trial court issued its Order, terminating Parents' rights to Children, finding with respect to Father that:

There is a reasonable probability that the continuation of the parent-child relationship between the Father and the Children poses a threat to the well-being of the Children.

* * * *

There is no reasonable probability that the conditions which led to the Children's removal will be remedied because Father has not participated in services and has not remedied the neglect and physical abuse issues, and has exhibited a pattern of neglect of his [C]hildren going back to 2007 and extending to a subsequent child adjudicated in need of services during the pendency of these Children's CHINS causes.

(Appellant's App. Vol. II, p. 33).

[11] Father now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[12] Father challenges the trial court’s termination of his parental rights to his Children. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). However, parental rights “are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Id.* If “parents are unable or unwilling to meet their parental responsibilities,” termination of parental rights is appropriate. *Id.* We recognize that the termination of a parent-child relationship is “an ‘extreme measure’ and should only be utilized as a ‘last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed.’” *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 646 (Ind. 2015) (quoting *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006)).

[13] Indiana courts rely on a “deferential standard of review in cases concerning the termination of parental rights” due to the trial court’s “unique position to assess the evidence.” *In re A.K.*, 924 N.E.2d 212, 219 (Ind. Ct. App. 2010), *trans.*

dismissed. Our court neither reweighs evidence nor assesses the credibility of witnesses. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1229 (Ind. 2013). We consider only the evidence and any reasonable inferences that support the trial court's judgment, and we accord deference to the trial court's "opportunity to judge the credibility of the witnesses firsthand." *Id.*

II. *Reasonable Probability*

[14] In order to terminate a parent's rights to his or her child, DCS must prove:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * * *

(iii) The child has been removed from the parent and has been under the supervision of a local office . . . for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a [CHINS] . . . ;

(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 [CHINS];

(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 each of the foregoing elements by clear and convincing evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 92 (Ind. Ct. App. 2014). “[C]lear and convincing evidence requires the existence of a fact to be highly probable.” *Id.*

[15] It is well-established that “[a] trial court must judge a parent’s fitness as of the time of the termination hearing and take into consideration evidence of changed conditions.” *Stone v. Daviess Cnty. Div. of Children & Family Servs.*, 656 N.E.2d 824, 828 (Ind. Ct. App. 1995), *trans. denied*. In judging fitness, a trial court may properly consider, among other things, a parent’s substance abuse and lack of adequate housing and employment. *McBride v. Monroe Cnty. OFC*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court may also consider a parent’s failure to respond to services. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. “[H]abitual patterns of conduct must be evaluated to determine whether there is a substantial probability of future neglect or deprivation.” *Stone*, 656 N.E.2d at 828. A trial court “need not wait until the child[] [is] irreversibly influenced by [its] deficient lifestyle such that [its] physical, mental and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Furthermore, “[c]lear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child’s very survival. Rather, it is sufficient to show

by clear and convincing evidence that the child’s emotional and physical development are threatened by the respondent parent’s custody.” *K.T.K.*, 989 N.E.2d at 1230.

[16] In adjudicating Children as CHINS, the trial court determined that Children were removed from Father’s care based on the abuse and neglect suffered by them and for which Parents were arrested and charged.² The historical evidence in this case reflects that in 2007, the State charged Father with neglect of a dependent with respect to an older child that he had with his wife—not Mother. In 2018, the court removed Children from Father’s care because of neglect, and on June 27, 2019, the trial court removed Children because of severe abuse in this case. On May 4, 2020, while the current proceeding weaved its way through court, DCS removed Sibling from Father’s care in the Hancock County case because of abuse and neglect. In the Hancock County proceeding, Father admitted that Mother created an undue risk of harm to Sibling when she was holding Sibling while intoxicated to the point she could not safely parent, and admitted that he also had consumed alcohol prior to the incident.

[17] Besides fatherhood engagement classes, Father did not address any family issues in this case. He never requested DCS for services, nor did he participate

² Contrary to Father’s assertion, the trial court did not terminate his parental rights because of the analogous criminal proceeding with respect to Children and the protective order on behalf of Children which stopped Father from being able to exercise visitation with Children.

in any. Although Father did submit to three drug screens, two of these returned positive for buprenorphine, and he never scheduled his intake at Aspire, a community mental health clinic.

[18] Father now contends that he could not comply with the case plan or complete the ordered services as he was unaware which services he was required to participate in or what he needed to address. Specifically, Father argues he was unable to know what issues needed to be addressed because the record lacked a fact-finding order, a pre-dispositional report, a timely entry of Father's dispositional order, or an appropriate modification of disposition petition.

[19] However, the record reflects that on July 24, 2019, at Mother's dispositional hearing, the trial court ordered Father, through a parental participation order, to participate in individual counseling and follow all recommendations, to cooperate with homebased services, to complete a drug/alcohol assessment and follow all recommendations, to submit to random drug screens, to obtain and maintain legal employment and adequate housing, and to abstain from the use of illegal drugs. The following month, at Father's initial hearing on August 29, 2019, the trial court advised Father of the "dispositional alternatives available to the [c]ourt if the [C]hildren are adjudicated [CHINS], the potential for parental participation, the consequences for failure to comply, and financial responsibility." (Exh. Vol. II, p. 25). At the dispositional hearing for Father on November 6, 2019, the trial court explained that Children needed to "have a clean home with appropriate supervision and free from violence and illegal activity including substance abuse," and further cautioned that participation by

Father was necessary to provide Children with these necessities. (Exh. Vol. II, p. 14). On December 18, 2019, after he was released from incarceration, the trial court ordered Father to “commence the other services ordered in the Dispositional Decree soon.” (Appellant’s App. Vol. II, p. 21). Thereafter, Father attended a case conference on May 20, 2020, where the trial court established that DCS had offered services to Father, and the need for permanency planning for Children was discussed. At a review hearing on June 17, 2020, the trial court provided Father with a report that established that he was ordered to complete counseling, homebased casework, fatherhood engagement, substance abuse assessment and follow all recommendations, and to submit to random drug screens.

[20] At no time during these proceedings did Father raise any concerns about the services or requested clarification of these orders or the case plan. Even if the trial court failed to clarify the services Father was expected to participate in, which it did not, “the responsibility to make positive changes will stay where it must, on the parent. If the parent feels the services ordered by the court are inadequate to facilitate the changes required for reunification, then the onus is on the parent to request additional assistance from the court or DCS.” *Prince v. Ind. Dep’t of Child Servs.*, 861 N.E2d 1223, 1231 (Ind. Ct. App. 2007).

[21] Father’s failure to engage in services during these proceedings demonstrates a “lack of commitment to complete the actions necessary to preserve [the] parent-

child relationship.”³ *In re A.L.H.*, 774 N.E.2d 896, 900 (Ind. Ct. App. 2002). We have previously concluded that “parents’ past behavior is the best predictor of their future behavior.” *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Despite Father’s prior involvement with DCS in 2007 and again in 2018, Father’s behavior did not change. Moreover, Father’s involvement in the current proceedings did not prevent the younger Sibling from being similarly adjudicated a CHINS based on alleged abuse and neglect. The trial court was entitled to weigh the evidence as it found appropriate in the context of this case, and we affirm the trial court’s conclusion that a reasonable probability exists that the conditions that resulted in Children’s removal will not be remedied. *See K.T.K.*, 989 N.E.2d at 1234. As such, we affirm the trial court’s decision.

III. *Best Interests of Children*

[22] Father also challenges the trial court’s conclusion that termination is in Children’s best interests. To determine whether termination is in a child’s best interests, the trial court must look to the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parents to those of the child and need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* In this regard, “recommendations by both the case manager

³ Father also points to the progress he made towards reunification with Sibling in the Hancock County proceeding. While we applaud this progress in that case, the reality remains that in the case before us, Father failed to participate in any services or made any progress towards reunification with Children.

and the child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests."

A.D.S. v. Ind. Dep't of Child Servs., 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013), *trans. denied*.

[23] DCS's family case manager (FCM) testified that it would be in Children's best interests to sever the parent-child relationship "[d]ue to the amount of time that has lapsed since the [C]hildren have last seen their parents [] and the [] things that they have had to experience[.]" (Tr. p. 61). Likewise, the Children's CASA testified that Father would not be able to provide Children with a "stable home free of violence." (Tr. p. 71). CASA had been the CASA on the prior case in which Children had been involved and she opined that "the services have not remediated those issues" and Parents' habitual patterns of conduct would continue. (Tr. p. 71). She advised that it would be in Children's best interests to terminate the parent-child relationship. She clarified that her opinion would not change just because Father may not have been the primary parent "at fault" during the earlier case involving Children and voiced her concern that even after the current CHINS case opened, Father continued to live with Mother and endangered Sibling. Both FCM and CASA testified that Children are doing great in their foster placement, and the foster parents are willing to adopt Children. "Termination, allowing for a subsequent adoption, would provide [Children] with the opportunity to be adopted into a safe, stable,

consistent, and permanent environment where all their needs will continue to be met, and where they can grow.” *In re A.D.S.*, 987 N.E.2d at 1159.

[24] Father failed to avail himself of the opportunities and services offered by DCS to reunite with Children and made no progress nor commitment during the proceedings of the case. “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d at 648. Even though “the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child’s interest to maintain this relationship.” *In re B.D.J.*, 728 N.E.2d 195, 200 (Ind. Ct. App. 2000). Father’s historical inability to provide a safe environment for Children, together with his current lack of participation in services requested by DCS to address family issues, supports the trial court’s conclusion that termination of his parental rights is in the best interests of Children. Accordingly, we affirm the trial court’s decision.

CONCLUSION

[25] Based on the foregoing, we hold that the trial court properly terminated Father’s parental rights to Children.

[26] Affirmed.

[27] Robb, J. and Molter, J. concur