

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
E.M., H.W., and Ja.W. (Minor
Children) and J.W. (Father)

J.W. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner

October 19, 2022

Court of Appeals Case No.
22A-JT-1146

Appeal from the
Orange Circuit Court

The Honorable
Steven L. Owen, Judge

Trial Court Cause Nos.
59C01-2011-JT-200
59C01-2011-JT-201
59C01-2011-JT-202

Vaidik, Judge.

Case Summary

- [1] J.W. (“Father”) appeals the termination of his parental rights to three of his children. We affirm.

Facts and Procedural History

- [2] Father and Je.W. (“Mother”) (collectively, “Parents”) married in 2013. Father is the biological father of E.M., born in 2011, and Ja.W., born in 2014, and is the legal father of H.W., born in 2013.¹ Mother is the children’s biological mother, and her parental rights to the children were also terminated. She appealed separately, and we affirmed. *In re J.W.*, No. 21A-JT-1788, 2022 WL 588523 (Ind. Ct. App. Feb. 28, 2022), *trans. denied*. Many of the following facts are taken from that opinion.²
- [3] On April 1, 2016, the Department of Child Services (DCS) in Orange County received a report that the children’s sibling—who had been born the day before—tested positive for opiates and there was ongoing drug use in the home. In addition to the newborn sibling, at that time Parents resided with four-year-

¹ Several witnesses, including Mother, testified Father is not the biological father of H.W. However, because Mother and Father were married when H.W. was born, Father is the legal father. Tr. Vol. III p. 161. No petition to disestablish paternity was ever filed.

² Parents are also the biological parents of Hy.W., born in 2016, Jn.W., born in 2017, and L.W., born in 2019. These children were involved in the termination proceeding, and Parents’ rights were terminated as to all six children. After the termination but before initiating his appeal, Father consented to the adoption of the three younger children by their foster family, and the adoptions occurred earlier this year. Thus, he challenges the termination order only as to E.M., Ja.W., and H.W. For clarity, “the children” refers to only E.M., Ja.W., and H.W. unless otherwise indicated (i.e., “all six children”).

old E.M., two-year-old H.W., and one-year-old Ja.W. Family Case Manager (FCM) Kimberly Byrum investigated the report, and Mother admitted to using illegal substances during her pregnancy. Parents entered into an Informal Adjustment with DCS to participate in services but failed several drug screens. In November, DCS filed petitions alleging the children were in need of services (CHINS) due to Parents' continued drug use. In February 2017, the children were adjudicated CHINS but remained in the home. At the dispositional hearing, Parents were ordered to, among other things, obey the law, complete a substance-abuse assessment and follow any recommended treatment, not use illegal substances, and submit to drug screens.

[4] In May, Mother was charged with Level 6 felony possession of methamphetamine.³ At the time, Father was incarcerated.⁴ Due to these ongoing legal and substance-abuse issues, the children were removed from Parents' care. The children were initially placed with their great-grandmother, but due to her medical issues they were removed a few months later and placed in foster care.

[5] For the next two years, Parents failed to comply with the case plan. Parents began therapy to address "coping skills" and "sobriety" but attended only a few sessions. Tr. Vol. II p. 101. DCS recommended Parents participate in a drug-

³ Mother pled guilty, and the conviction was later reduced to a Class A misdemeanor.

⁴ The record does not reveal why Father was incarcerated.

rehabilitation program, but Parents refused inpatient treatment and inconsistently attended outpatient treatment. During this time, two other siblings were born. Both were adjudicated CHINS shortly after birth due to Mother's drug use during the pregnancies.

[6] In the summer of 2019, Parents began to comply with the case plan, attending therapy, consistently visiting with the children, and generally testing negative for drugs. A trial home visit began in December 2019 with E.M., then 8, H.W., then 6, and Ja.W., then 5, as well as their three younger siblings—then 3, 2, and 1. But Parents struggled to adjust to a home with six children. In early 2020, at Parents' request, two of the younger siblings were removed and placed back with foster parents. That same month, Parents experienced issues in their relationship, and the children reported Parents argued in front of them. E.M. and H.W. began exhibiting poor behavior and mental health at school, and E.M. indicated she was unable to sleep due to concerns over Parents' fighting, causing her to hallucinate at school. During one fight between Parents, Mother threw a wooden board at Father but accidentally hit H.W. Father began testing positive for methamphetamine or refusing drug screens. Also during this time, the probation department searched the home—pursuant to Mother's probation for her 2017 possession-of-methamphetamine conviction—and found marijuana, which Father claimed was his.

[7] Due to Parents' marital issues and substance abuse, the trial home visit was terminated unsuccessfully in March 2020 and the remaining children were removed from the home. E.M. and H.W. were placed together with one foster

family, and Ja.W. was placed with another. After the home visit was terminated, Parents were not compliant with the case plan. They frequently canceled visits with the children, and when they did attend they were “overwhelmed,” fought during visits, and were unable to deal with the children’s “emotional outbursts” or appropriately discipline. Tr. Vol. III p. 61. Parents attended only a few therapy sessions in the spring of 2020, despite weekly appointments. Father participated in only four sessions and offered “limited responses and engagement during sessions.” Appellant’s App. Vol. III p. 72. He also frequently refused to submit to drug screens.

[8] In June, Father began intensive outpatient therapy to address his substance abuse. However, he failed to consistently attend sessions and “did not progress.” *Id.* at 76. He tested positive for methamphetamine, amphetamine, and THC in September and October and admitted to using drugs with Mother, who was then pregnant with the couple’s seventh child.⁵ He was discharged unsuccessfully from the program in November, after attending only sixteen of fifty sessions. That month, DCS petitioned to terminate Parents’ rights to all six children. The children were removed from their foster homes and placed with their paternal grandparents, where they have since remained. In January 2021,

⁵ This child, D.W., was born in October 2020 and tested positive for illegal substances at birth. He was adjudicated a CHINS in January 2021. Unlike the other three siblings mentioned above, he was not a party to the termination proceedings.

Father tested positive for methamphetamine and amphetamine. After this drug screen, he refused to undertake any others.

[9] The termination hearing was held over five days between February and May 2021. FCM Karen Howson, who was the family’s case manager from 2017 to 2020, testified that the longest she was aware of Father staying sober was “two to three months.” Tr. Vol. III p. 185. She also testified Parents’ substance abuse led to marital issues, which affected the children to the point that E.M. was unable to sleep and hallucinating while at school. FCM Carole Johnson, the family’s current case manager, testified Parents were not willing to engage in services to address their substance-abuse issues and that it is in the best interests of the children for the parent-child relationships to be terminated. The children’s Court Appointed Special Advocate (CASA) Sarah Whiteman testified she had concerns about Parents’ substance abuse and inability to provide a sober caregiver. She also noted Parents’ substance abuse and marital issues affected the mental health of the older children because those children were “aware” of the issues and felt a need to “monitor” their parents. *Id.* at 222. She stated she believed it in the children’s best interests for the parent-child relationships to be terminated.

[10] The children’s grandmother testified that she and her husband have a strong bond with the children and wish to adopt them. Finally, Father testified at the hearing in April 2021 that it had only been “a couple of weeks” since he last used methamphetamine. Tr. Vol. IV p. 159. He stated his control over his addiction was “getting better” but “every day is a struggle” and he suffers from

a physical dependency on methamphetamine. *Id.* at 161. He also confirmed he had a pending charge for Level 6 felony possession of methamphetamine.⁶

[11] After the hearing, the trial court issued an order terminating Parents' rights to all six children.

[12] Father now appeals as to E.M., Ja.W., and H.W.

Discussion and Decision

[13] Father argues the evidence presented at the termination hearing does not prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences that are most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[14] A petition to terminate parental rights must allege, among other things:

⁶ According to the Odyssey Case Management System, this charge was dismissed in January 2022.

(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.

Ind. Code § 31-35-2-4(b)(2). DCS must prove the alleged circumstances by clear and convincing evidence. *In re K.T.K.*, 989 N.E.2d at 1231. 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).

I. Findings of Fact

[15] Father argues the evidence does not support Finding 245, which states:

Mother's substance use and Father's substance use [have] already harmed their children:

- a. Parents have seven (7) children who are in out-of-home care as a result of DCS involvement;
- b. Parents have used substances together during the entire lifetime of the oldest child, [E.M.], who is nine (9) years old;
- c. Parents have had drug-exposed infants born during their relationship who remain in out-of-home care[;]
- d. Mother used illegal substances when she was pregnant with [Ja.W.],
- e. Parents' use of illegal substances has caused issues in their relationship which creates instability and emotional harm to the children and [the children are] involved by [P]arents in their marital issues;
- f. Parents' use of illegal substances [has] prevented them from being consistent and providing for the care and supervision of the children; and
- g. Parents have not provided the children with a safe, stable home free from drugs and neglect.

Appellant's App. Vol. III p. 87. Father argues the portion of the finding stating his drug use "harmed" his children is erroneous because "there is no evidence that this drug use affected his ability to care for his Children." Appellant's Br. p. 27. This is the exact challenge made by Mother in her appeal and is incorrect for the same reasons. FCM Johnson testified Parents' substance abuse caused problems in their marriage and that the children witnessed this fighting and

were affected by it, to the point that E.M. could not sleep and hallucinated. CASA Whiteman testified Parents' drug use left the children without adequate supervision, which posed a safety risk and forced the children to monitor their own parents. The trial court did not err in making this finding.

II. Legal Conclusions

A. Conditions Remedied

[16] Father next challenges the trial court's conclusion there is a reasonable probability the conditions resulting in the children's removal and continued placement outside the home will not be remedied. In determining whether the conditions resulting in a child's removal will not be remedied, the trial court engages in a two-step analysis. First, the trial court must ascertain what conditions led to the child's placement and retention outside the home. *In re K.T.K.*, 989 N.E.2d at 1231. Second, the trial court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The "trial court must consider a parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." *Id.* (quotation omitted).

[17] The reason for the children's removal and continued placement outside the home was Parents' substance abuse and inability to provide a sober caregiver for their young children. And throughout five years of DCS involvement, Father showed no ability to remedy this issue. He continued to test positive for illegal substances throughout the case or refused to screen at all. The longest

time DCS was aware of him maintaining sobriety was two or three months. During the case, he and Mother had three more children, all of whom were exposed to drugs during the pregnancies. Father admitted to doing drugs with Mother while she was pregnant and testified at the termination hearing that he had used methamphetamine as recently as a few weeks before the hearing. Nor has he shown much interest in working on his substance abuse. His participation in DCS-recommended therapy to address the substance abuse was limited—he attended only a few sessions and barely engaged. And although he attended an inpatient treatment program, he continued to test positive for illegal substances and was unsuccessfully discharged due to lack of attendance.

[18] Nonetheless, Father argues the trial court’s findings “focus exclusively on [his] historical failures during the course of the CHINS and termination proceedings” and that these are insufficient to support the conclusion that the reasons given for the removal of the children would not be remedied. Appellant’s Br. p. 24. To support this argument, he cites our decision in *In re C.M.*, 960 N.E.2d 169 (Ind. Ct. App. 2011).

[19] This argument is identical to the one posited by Mother in her appeal and is unpersuasive for the same reasons. In *C.M.*, the mother’s children were removed due to her substance abuse and related legal issues. However, by the time of the termination hearing, the mother had voluntarily enrolled in a substance-abuse program, had consistent negative drug screens, and had two other children who remained in her care. Nonetheless, the trial court terminated

her parental rights, noting only her historical failures during the proceedings.

We reversed, holding

the court's focus on historical conduct, absent factual findings as to Mother's current circumstances or evidence of changed conditions, is akin to terminating parental rights to punish the parent. And, without more, the findings are insufficient to establish each element necessary to support the conclusion that termination is warranted in this case.

Id. at 175.

[20] In contrast, here the trial court made numerous findings on Father's current circumstances, including that he refuses to participate in therapy or other services to address his substance abuse, has a physical dependency on methamphetamine, had a pending drug-related criminal case at the time of the termination hearing, and had used methamphetamine as recently as a few weeks before the hearing. *See* Appellant's App. Vol. III pp. 83-84. Given that Parents' drug use was the predominant reason for the children's removal and continued placement outside of the home, these findings support the trial court's conclusion.

[21] The trial court did not err when it concluded there is a reasonable probability the conditions leading to the children's removal will not be remedied.⁷

⁷ Father also challenges the trial court's conclusion that there is a reasonable probability the continuation of the parent-child relationship poses a threat to the children's well-being. But because we affirm the trial court's

B. Best Interests

[22] Father next challenges the trial court's conclusion that termination is in the best interests of the children. In determining the best interests of a child, the trial court must look at the totality of the evidence. *See In re A.B.*, 887 N.E.2d 158, 167-68 (Ind. Ct. App. 2008). The trial court must subordinate the interests of the parents to those of the child. *Id.* at 168. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that their physical, mental, or 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.* We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence 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 (Ind. Ct. App. 2013), *trans. denied.*

conclusion there is a reasonable probability the conditions resulting in the children's removal will not be remedied, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find that only one of the requirements has been established by clear and convincing evidence), *trans. denied.*

[23] Here, FCM Johnson and CASA Whiteman support the termination of Father's parental rights, believing it to be in the children's best interests. Moreover, as we noted above, Father's issues with substance abuse have not been remedied and pose a safety risk to the children if they were returned to his care. *See In re A.S.*, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014) (finding termination of parental rights in children's best interests where parents did not address their substance-abuse issues or complete recommended services during the two-year case), *trans. denied*. While this evidence alone is sufficient to support the trial court's conclusion, permanency is a central consideration in determining best interests. The record shows the children have bounced around through several foster homes and relative placements during the over four-year CHINS proceedings. The children are now with their grandparents, who wish to adopt them.

[24] For all these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Father's parental rights is in the children's best interests.

[25] Affirmed.

Riley, J., and Bailey, J., concur.