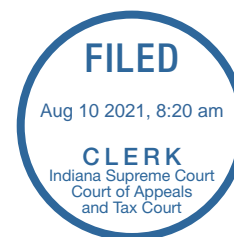


## MEMORANDUM DECISION

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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### ATTORNEYS FOR APPELLANT

S. Rod Acchiardo  
Paul Acchiardo  
Tell City, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
Monika Prekopa Talbot  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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In re the Termination of the  
Parent-Child Relationship of  
K.H. and A.H. (Minor Children)  
and M.S. (Father)

M.S. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner*

August 10, 2021

Court of Appeals Case No.  
21A-JT-641

Appeal from the  
Spencer Circuit Court

The Honorable  
Karen Werner, Temporary Judge

Trial Court Cause Nos.  
74C01-2010-JT-263  
74C01-2010-JT-264

**Vaidik, Judge.**

## Case Summary

- [1] M.S. (“Father”) appeals the termination of his parental rights to his daughters, A.H. and K.H. (“the children”). We affirm.

## Facts and Procedural History

- [2] Father and J.H. (“Mother”) (collectively, “Parents”) are the biological parents of A.H., born in 2014, and K.H., born in 2016. Mother’s parental rights were also terminated, but she does not participate in this appeal, so we limit our narrative to the facts relevant to Father.
- [3] On August 20, 2019, the Department of Child Services (DCS) in Spencer County received a report that Mother and the children were living in unsuitable housing conditions. At the time, Father was incarcerated in Kentucky for “third degree rape and sodomy” of a victim under the age of eighteen. Tr. p. 8. Family Case Manager (FCM) Nakaa Myers arrived at Mother’s home to conduct an assessment and found three-year-old K.H. there alone. The home was covered in animal feces, there was exposed wiring and holes in the floor, and it did not contain any food. K.H was wearing dirty clothes and smelled strongly of urine. Due to these conditions, DCS removed the children and placed them in foster care, where they have since remained.
- [4] Two days later, DCS filed petitions alleging the children were children in need of services (CHINS) due to Father’s incarceration and Mother’s living conditions. Pursuant to Parents’ admissions, the children were adjudicated

CHINS in November 2019. At the dispositional hearing, the trial court ordered Parents to participate in services. Father completed a parenting class at his correctional facility but was unable to enroll in other services due to long waitlists. Although Mother initially complied with DCS's case plan, over the course of the CHINS case she began frequently missing visitation and service appointments, and her housing conditions never met DCS's minimum standards. In October 2020, DCS filed petitions to terminate Parents' rights.

[5] The termination hearing occurred in March 2021. Father testified he had been incarcerated in Kentucky since February 2017 and his earliest release date is 2027. He testified he had a plan for post-incarceration employment but did not have housing and would "never be able to give [the children] a safe and stable home." *Id.* at 43. Father described his relationship with the children as "rocky." *Id.* at 8. He stated he did not live with the children before his incarceration but had visited them at Mother's house. Although he spent time with A.H., he stated he had "just gotten to know [K.H.]" before his incarceration. *Id.* at 39. He testified he maintained phone contact with the children after his incarceration in 2017 but had not spoken to them since their removal from Mother's home in 2019. Although DCS provided him envelopes and stamps to write to the children, Father stated he sent only one letter because FCM Miranda Lilley instructed him not to include "empty promises" in the letter and he didn't know "how [else] to talk to [the children]." *Id.* at 40, 41.

[6] FCM Lilley testified the children were doing well in their pre-adoptive placement and recommended terminating Father's parental rights due to his

incarceration and “concern[s] with his criminal background,” which includes rape and sodomy of a child. *Id.* at 34. She also stated keeping the children in foster care for the next six years in the hope of a potential reunification with Father would not be in their best interests.

[7] After the hearing, the trial court issued orders terminating Parents’ rights. Specifically, the court found Father had “not maintained a meaningful role in the children’s lives” and “the children did not know him as their father.” Appellant’s App. Vol. II p. 33. And because he could not care for them while incarcerated, the court found it was in the children’s best interests for the parent-child relationship to be terminated.

[8] Father now appeals.

## Discussion and Decision

[9] Father argues DCS did not prove the statutory requirements for termination by clear and convincing evidence. 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).

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

(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, it “shall terminate the parent-child relationship.” I.C. § 31-35-2-8(a).

[11] Father challenges only 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 his or her 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 the child. *Id.*

[12] Father argues his case “strongly mirrors” *In re G.Y.*, 904 N.E.2d 1257 (Ind. 2009), *reh’g denied*, in which the mother, who was incarcerated for a drug-related offense, challenged the trial court’s finding that termination was in her child’s best interests. Appellant’s Br. p. 10. The mother had been the child’s sole caretaker from birth until her arrest when he was twenty months old. During her incarceration, the mother maintained a parental relationship with her child—attending visits, arranging childcare, and actively participating in services to facilitate reunification upon her release. Nonetheless, citing the mother’s incarceration and the child’s need for permanency, the trial court terminated her parental rights. Our Supreme Court reversed, noting that given the mother’s “commitment and interest in maintaining a parental relationship” and her “imminent” release date, it was not in the child’s best interests for the relationship to be terminated. *Id.* at 1265.

[13] The same cannot be said here. Unlike the mother in *G. Y.*, Father is incarcerated for a violent crime against a child. Furthermore, Father has not shown the same commitment to maintaining a parental relationship. The children, now five and seven, have not seen him in over four years and do not know him as their father. He has never been their primary caretaker, never provided them a safe and stable home, and has a “rocky” relationship with them. Father has contacted the children only once since their removal by DCS in August 2019. He then chose not to continue contact because he did not know how to talk to the children beyond asserting “empty promises.” Father also testified that he had no plan as to how to house the children if they were reunified. And Father’s earliest release date is 2027—six years after the termination hearing and far from the “imminent” release noted in *G. Y.*

[14] For 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.

[15] Affirmed.

Kirsch, J., and May, J., concur.