

## 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 Termination of the Parent-  
Child Relationship of:  
T.I. (Minor Child),  
  
and  
  
J.I. (Father),  
*Appellant-Respondent,*

v.

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

July 6, 2022

Court of Appeals Case No.  
22A-JT-213

Appeal from the Tippecanoe  
Superior Court

The Honorable Nancy L.  
Gettinger, Senior Judge

Trial Court Cause No.  
79D03-2110-JT-77

**Weissmann, Judge.**

- [1] J.I. (Father) appeals the termination of his parental rights as to his 1½-year-old daughter, T.I. Father claims he is being unlawfully separated from his daughter based on his marijuana use and his refusal to live apart from S.I., who is his wife and T.I.'s mother. But S.I. (Mother) is a convicted sex offender whose parole conditions prohibit her from being around T.I. for another 14 ½ years. Finding the trial court's analysis was much broader than Father alleges and its judgment is supported by clear and convincing evidence, we affirm the termination of Father's parental rights.

## Facts

- [2] Mother was convicted of sexual misconduct with a minor in Lawrence County in 2011 and vicarious sexual gratification with a minor in Clinton County in 2012. She served her sentences for those crimes in the Department of Correction before being paroled. Because she is classified as a sexually violent predator, Mother is under the supervision of the Indiana Parole Board for life. As a condition of her parole, she cannot have direct or indirect contact with any child under 16, including her own.
- [3] T.I. was born with marijuana in her system in January 2021. At that time, DCS had a pending petition alleging another of Mother's children to be a child in need of services (CHINS). Father was facing domestic violence charges that were later dismissed, and he admitted to using marijuana. Based on all these circumstances, DCS filed a CHINS petition as to T.I., removed her from Mother and Father (Parents), and placed her with a relative. When the relative

caring for T.I. suffered medical problems, the child was placed in a pre-adoptive foster care home, where she remains.

[4] The trial court granted DCS's CHINS petition as to T.I. three months after the child's birth. It ordered Father to participate in individual counseling as recommended, homebased case management, a substance abuse assessment, a Parent Family Functional Assessment, domestic violence services, drug screens, and visitation. The court also ordered Father to refrain from using controlled substances unless prescribed and from consuming any products containing THC.

[5] Father completed the parenting assessment, which identified "unhealthy functioning" and some "warning signs that could impede safe parenting and/or successful long-term reunification." App. Vol. II, p. 15; Tr. Vol. II, p. 41. Father never achieved stable housing and has lived with Mother since T.I.'s CHINS proceeding began. He also never completed domestic abuse counseling and has continuously tested positive for THC. Father's visitation with T.I. was sporadic.

[6] DCS petitioned to terminate Parents' parental rights when T.I. was ten months old. After a joint hearing, the trial court granted that petition, concluding that T.I. had been removed from Parents for at least six months under a dispositional decree. The court also concluded that the circumstances prompting T.I.'s initial and continued removal from Father had not been remedied and that a reasonable probability existed that they would not be.

Finally, the court determined that termination of parental rights was in the best interests of T.I., and that DCS had a satisfactory plan for her (adoption). Father appeals, but Mother does not.

## Discussion and Decision

[7] Termination of parental rights is proper only when DCS alleges and proves by clear and convincing evidence:

(2) The petition must allege:

(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.

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(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.

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(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); *see also* Ind. Code § 31-37-14-2.

[8] When reviewing a termination of parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). Applying a two-tiered standard of review, we determine whether the evidence supports the findings before deciding whether the findings support the judgment. *Id.* We set aside the judgment only if it is clearly erroneous. *Id.*

## I. Challenge to Findings

[9] Father appears to challenge the findings in only one respect. He contends the evidence does not support the trial court's various findings that Father plans to continue to reside with Mother. Father notes that both before and after T.I.'s removal, Mother and he had discussed living apart and communicated that information to service providers.

[10] But Mother and Father never implemented such a plan. Tr. Vol. II, p. 92. The record shows they continued living together. Father even declared at times that he would not live separately from Mother or that they would move to North Carolina to live together with T.I. *Id.* at 78-79, 92. He apparently believed Mother's parole restrictions would not apply there.

[11] Based on this evidence, the trial court reasonably found that Father plans to continue to reside with Mother. At the least, Father is asking us to reweigh the evidence impermissibly. *See R.S.*, 56 N.E.3d at 628.

## II. Remediating of Conditions

- [12] Father contends the trial court erroneously terminated his parental rights based on his unwillingness to live apart from Mother and his use of marijuana. Given our standard of review, we treat this argument as a challenge to the trial court's conclusion that there is a reasonable probability that the conditions resulting in removal or for continued placement outside his home will not be remedied. When reaching that conclusion, a trial court must judge a parent's fitness to care for his child at the time of the termination hearing, considering any changed circumstances and the parent's habitual patterns of conduct. *K.T.K. v. Ind. Dep't Child Servs.*, 989 N.E.2d 1225, 1231 (Ind. 2013).
- [13] Father argues his "choice to continue his marriage was central to the decision to terminate his parental rights." Appellant's Br., p. 14. But the trial court never made such a finding. Although Father's unwillingness to live apart from Mother factored into the trial court's analysis, it was one of several factual findings on which the trial court relied in concluding that the conditions that led to removal would not be remedied. In any case, the continuation of the marriage did not trigger the trial court's judgment—it was Father's failure to live apart from Mother that impeded reunification. Given Mother's parole restrictions, T.I. could not live in a home with Mother.
- [14] Father appears to rely on *In re V.A.*, 51 N.E.3d 1140 (Ind. 2016), in which our Supreme Court reversed a termination of the parental rights of a father who refused to live apart from his mentally ill wife. *Id.* at 1147. But the facts of that

case are far different. Unlike Father, the parent in *V.A.* had complied with the CHINS court's orders and had obtained stable housing. *Id.* at 1151. The foster home would care for V.A. until her father could find a safe way to care for his wife and her together in the same home. *Id.* at 1152. Moreover, the mother's condition was treatable, while Mother's lifetime parole restrictions are fixed until modified. Mother's request for modification already has been denied once, and future modifications are not assured.

[15] Father also asserts that DCS was "fixated and obsessed" with his marijuana use, which he views as "prov[ing] nothing" because marijuana is legal in many states. Appellant's Brief, p. 11. But Father's continued illegal use of marijuana in violation of the court's order was just one of the reasons the court determined that the conditions prompting or sustaining T.I.'s removal likely would not be remedied.<sup>1</sup> The court also relied on evidence showing that Father:

- denied needing any parenting guidance;
- inconsistently visited with the child;
- did not complete services as ordered;
- lacked stable housing and was living with Mother in a motel at the time of the hearing;
- was arrested for domestic abuse in the presence of a child during 2021, although that charge later was dismissed.;

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<sup>1</sup> Father asserted that he used marijuana as part of his Rastafari religion. He does not challenge the trial court's treatment of his use of marijuana or related products on any religious liberty grounds.

- did not appreciate that T.I.’s exposure to Mother would be unsafe and needed to engage in services to address that issue and others;
- failed to obtain separate housing from Mother and stated he would continue to live with her.

[16] This evidence was adequate to prove that the conditions that led to T.I.’s initial and continued removal—lack of appropriate housing separate from Mother, domestic violence concerns, and continued use of prohibited substances—had not been remedied.

### III. Best Interests of Child

[17] Father next claims that the evidence does not support the trial court’s conclusion that termination of his parental rights was in T.I.’s best interests. We review the totality of the evidence when determining the propriety of the “best interests” conclusion. *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019).

[18] Father argues that the trial court should have placed T.I. with his relative in North Carolina, who had been approved as a caregiver under the Interstate Compact for the Placement of Children shortly before the termination hearing. That would have allowed the CHINS proceeding to continue and for Father to continue to work toward reunification.

[19] But Father had a year to show he could provide a safe, stable home free of sex offenders barred from contact with children. He largely was resistant to reunification efforts throughout the CHINS proceeding. At the termination hearing, his situation had only worsened, given that he lived with Mother in a



motel and had no plans to move away from her. Father failed to show any understanding of the dangers that a sexually violent predator poses to a child. He also refused to comply with court orders entered with T.I.'s best interests in mind, and his employment and finances were erratic. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) ("A parent's historical inability to provide adequate housing, stability and supervision coupled with a current ability to provide the same will support a finding that termination of the parent-child relationship is in the child's best interest.").

[20] The trial court did not err in finding that termination of Father's parental rights, rather than an extension of the CHINS proceedings, was in T.I.'s best interests. *See id.* at 224 (ruling that a child's need for permanency dictates that children cannot wait indefinitely for their parents to accomplish reunification). As Father offers no grounds for reversal, we affirm the trial court's judgment terminating his parental rights.

Robb, J., and Pyle, J., concur.