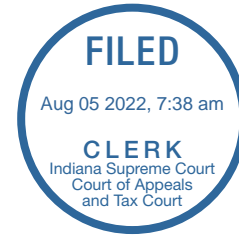


MEMORANDUM DECISION

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

In the Termination of the Parent-
Child Relationship of:
C.H. (Minor Child),

and

M.H. (Father),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

August 5, 2022

Court of Appeals Case No.
21A-JT-2772

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2107-JT-122

Weissmann, Judge.

- [1] M.H. (Father) was incarcerated when the State took custody of his 10-year-old son, C.H. (Child), due to domestic violence in Child’s mother’s home. After Child was found to be a child in need of services (CHINS), the State tried to reunite Child with Father repeatedly during the next five years. But Father was always incarcerated. Upon his release, Father failed to engage in most court-ordered services or provide documentation of housing or reportable income. The trial court ultimately terminated his parental rights.
- [2] Father appeals that judgment, claiming the evidence does not support it. We disagree and affirm.

Facts

- [3] After Child was exposed to domestic violence and substance abuse in his mother’s home in 2016, the Indiana Department of Child Services (DCS) removed Child and petitioned for a CHINS finding. Father was incarcerated at the time. The trial court found Child to be a CHINS and ordered Father to engage in homebased counseling, random drug screens, and supervised visitation. Child eventually was placed—and continues to live—with paternal relatives.
- [4] DCS attempted repeatedly to reunite Father with Child during the five years after the CHINS determination. But DCS found Father to be incarcerated each time. Father did not engage in most court-ordered services, either during his incarceration or upon his release. Shortly before Mother’s death in 2021, DCS

petitioned to terminate the parental rights of both Father and Mother. At the time of the termination hearing, Father was not incarcerated, but he was under pretrial supervision in pending felony prosecutions. Father still refused to participate in most court-ordered services, although he regularly engaged in supervised visits with Child, then 15.

[5] For unexplained reasons, Father did not appear at the termination of parental rights hearing, although his counsel did. After a brief presentation of evidence by DCS, the trial court found by clear and convincing evidence that:

- “The child has been removed from parent(s) for at least six (6) months under a dispositional decree . . . and has been under the supervision of [DCS] for at least fifteen (15) of the most recent twenty-two (22) months.”
- “There is a reasonable probability that the conditions resulting in the removal of the child from parents’ home will not be remedied in that: The child became a ward of [DCS] due to domestic violence issues and substance abuse issues. Father was incarcerated at the time of the child’s removal.”
- “There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child”
- “It is in the best interest of the child . . . that the parent-child relationship . . . be forever fully and absolutely terminated.”
- “[DCS] has a satisfactory plan for the care and treatment of the child which is Adoption.”

Appellant’s Amended App., pp. 3-4. Accordingly, the trial court terminated Father’s parental rights to Child. Father now appeals.

Discussion and Decision

[6] Father challenges three of the trial court's conclusions as not supported by clear and convincing evidence. He contends that: (1) the conditions leading to initial and continued removal of the child have been remedied; (2) continuation of his relationship with Child will not harm Child; and (3) termination of his parental rights is not in Child's best interest. Finding sufficient evidence to support these conclusions and the trial court's judgment, we affirm.

I. Standard of Review

[7] A petition to terminate parental rights must allege, in relevant 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 . . .

(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). If the trial court finds these allegations are true by clear and convincing evidence, it must terminate the parent-child relationship.

Ind. Code §§ 31-35-2-8, -37-14-2.

[8] In reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility and will set aside the judgment only if clearly erroneous. *In re C.S.*, No. 21A-JT-2916, 2022 WL 2196395, at *3 (Ind. Ct. App. June 20, 2022). Applying a two-tiered standard of review, we first determine whether the evidence supports the findings and then decide whether the findings support the judgment. *Id.* As Father does not challenge any of the trial court’s factual findings, we accept them as true.

II. Remediating Conditions and Threat to Child

[9] Father argues that clear and convincing evidence fails to establish that the conditions leading to Child’s removal were unlikely to be remedied and that his continued relationship with Child threatened Child’s well-being. Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, DCS must only prove one of these factors by clear and convincing evidence. *Id.* We find that DCS adequately proved both factors with the same evidence of Father’s criminal propensities and refusal to engage in services.

A. Remediating Conditions

[10] When considering the remediating conditions prong, we first identify the relevant conditions prompting removal or continued placement outside the home. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). Second, we “determine whether there is a reasonable probability that those conditions will not be remedied,” considering the parent’s fitness at the time of termination and habitual patterns of conduct. *Id.* The court may consider evidence of a parent’s prior criminal history, drug

and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *McBride v. Monroe Cnty. Off. Fam. & Child.*, 798 N.E.2d 185, 202 n.13 (Ind. Ct. App. 2003). The parent's response to offered services also is relevant. *In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008).

[11] Domestic violence and substance abuse in Mother's home, combined with Father's unavailability to care for Child, prompted Child's initial removal. Tr. Vol. II, p. 8. Father remained separated from Child for the next five years due to his incarceration. *Id.* at 8. Finding that Father had not, and likely would not, remedy those circumstances, the trial court determined that "Father has not demonstrated an ability to independently parent the child and provide the necessary care, support, and supervision." Appellant's Amended App. Vol. II, p. 4. The court further determined that "[t]here is no basis for determining the father will complete the necessary services" or that he would place "himself in a position to receive the child into the home." *Id.*

[12] Father, noting his employment and lack of current incarceration, argues that he "is now in a different place in his life from when the case first started." Appellant's Br., p. 10. But Father fails to acknowledge that he is facing at least two felony prosecutions and probation revocation, all of which were filed before the termination hearing. He also ignores his revolving-door contacts with the criminal justice system since the CHINS case was opened in 2016.

[13] In 2017, Father, a habitual traffic offender without a license, was arrested after allegedly driving while intoxicated and charged with five offenses in case

number 64D04-1712-F6-11416. Exhs., pp. 20-35. After pleading guilty to Level 6 felony operating a motor vehicle while intoxicated with a prior conviction in exchange for dismissal of the remaining charges, he was sentenced to 910 days in jail, with all but 90 days of the sentence suspended to probation. *Id.*

[14] In 2019, Father was arrested and charged in case number 64D04-1908-F6-7655 with five more offenses while again allegedly driving while intoxicated. *Id.* at 41. He pleaded guilty to operating a vehicle as a habitual traffic offender in exchange for dismissal of the remaining charges and his admission that he violated the terms of his probation in case number 64D04-1712-F6-11416. *Id.* at 36, 46-47. The trial court sentenced Father to 540 days in jail, suspended to probation. *Id.*

[15] Three months later, Father was arrested and charged in case number 45D07-2006-F6-1241 with Level 6 felony operating a vehicle as a habitual traffic offender, Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle while intoxicated, and Class C misdemeanor reckless driving. *Id.* at 64. Those charges remained pending as of the termination hearing. *Id.* at 62. Father also admitted violating his probation in case number 64D04-1908-F6-7655, prompting the trial court to revoke his probation and order the rest of his sentence served in prison. *Id.* at 50-51, 53-54.

[16] The next year Father again was arrested and charged in case 45D07-2107-F6-1817 with Level 6 felony operating a vehicle as a habitual traffic offender. *Id.* at

70-71. One month after his arrest on that charge and three months before the termination hearing, Father was charged in case number 45D07-2108-F6-2044 with yet another count of Level 6 felony operating a vehicle as a habitual traffic offender. *Id.* at 77. Both cases, as well as a probation revocation proceeding, remained pending at the time of the termination hearing. *Id.* at 79.

[17] In all, Father, who was 39 when his parental rights were terminated, has been convicted in 17 misdemeanor and 13 felony prosecutions during the past 20 years. *Id.* at 83. That means Father has averaged at least one criminal conviction per year throughout his adulthood. Just during the four months between the filing of the petition to terminate his parental rights and the hearing on that petition, Father was arrested twice on felony charges. *Id.* at 70-71, 77.

[18] Far from remedying conditions since the CHINS finding, Father has instead stayed true to his habitual pattern of arrests and criminal convictions. Even if he can now provide a home for Child, Father's regular arrests and convictions suggest he will not sustain it. He also failed to complete court-ordered services in the five years since the CHINS filing and did not appear at the hearing to determine whether his parental rights should be terminated. The evidence supported the trial court's determination that the conditions leading to Child's removal and justifying Child's continued removal from Father likely would not be remedied.

B. Threat to Child

[19] Pointing to his alleged employment and his twice weekly visits with Child, Father argues that he is no threat to Child. He also contends that termination of his parental rights was unnecessary because Child lived with relatives and delaying their adoption of him would not harm Child. Father’s prolific criminal history, together with his refusal to engage in most court-ordered services, justified the trial court’s conclusion that continuation of the parent-child relationship would threaten Child’s emotional and physical well-being.

[20] Father has never confirmed his housing to DCS. And he reported that he is employed at a job that pays him only in cash. Even so, Father has never contributed financially to Child. Aside from supervised visits with Child, Father has done little to show he can safely parent Child or that he can prioritize Child’s needs. Father was ordered to undergo twice-weekly drug screens beginning in 2016 but completed only 15 in five years.

[21] A court in 2017 limited Father’s contact with another of his children due to Father’s “ongoing substance abuse issues, domestic violence issues[,] and history of child abuse.” Exhs., p. 18. Father’s absence from the termination hearing—a critical event in the lives of both Father and Child—is unexplained.

[22] Child has already waited five years for Father to prove himself, to no avail. Father’s relatives, who have cared for Child throughout that time, are prepared to adopt the 15-year-old. Child, who endured his mother’s substance abuse and early death and Father’s repeated incarcerations during the past five years, has

consented to the adoption. Father's claim that he has changed and will prove a stable, adequate home to Child lacks any evidentiary or historical support. Even if Father is given the added time he requests, nothing in the record suggests Father will achieve the stability that Child needs.

[23] The trial court properly concluded that continuation of the parent-child relationship would threaten Child's well-being. *See In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002) (court need not wait until a child's physical, mental, and social growth is irreversibly influenced by a parent's deficient lifestyle to terminate the parent-child relationship).

III. Best Interests

[24] For almost identical reasons, as well as permanency considerations, the trial court correctly determined that termination of Father's parental rights is in Child's best interests. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010) (the same evidence may prove multiple elements of a termination of parental rights). When evaluating Child's best interest, we review the totality of the evidence. *See In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009).

[25] The totality of the evidence establishes that Father has not achieved prolonged freedom from incarceration, stable housing, or a dependable income. His criminal record suggests an unwillingness to comply with societal standards, and his compliance with the CHINS court's orders to participate in services is abysmal.

[26] The only stability Child has known for many years has been in his pre-adoptive home, given that he was exposed to substance abuse and domestic violence in Mother's home before her untimely death and Father largely was incarcerated during the past five years. Permanency is a central consideration in determining the best interests of Child. *See In re G. Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). The trial court correctly concluded that Child had waited long enough to achieve permanency and that Child's best interests dictated termination of Father's parental rights.

[27] We affirm the judgment of the trial court.

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