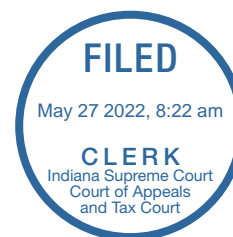


MEMORANDUM DECISION

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 Involuntary Termination
of the Parent-Child Relationship
of:

H.M. and M.M. (*Minor Children*),

and

B.E. (*Father*),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

May 27, 2022

Court of Appeals Case No.
21A-JT-2613

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause Nos.
72D01-1907-JT-48
72D01-1907-JT-49

Robb, Judge.

Case Summary and Issue

Facts and Procedural History

- [2] Father and J.M (“Mother”) were married in 2015.¹ H.M. was born in February 2017. Within a week of H.M.’s birth, DCS received a report that she and Mother were residing with family in a home that was dirty and to which the water had been turned off. There was also concern that others in the home were using methamphetamine and that Mother was not attending to her mental health needs. Mother admitted the home was not suitable and she and H.M. temporarily moved in with Mother’s grandmother. Mother and DCS entered into an informal adjustment agreement in March to assist Mother in addressing her mental health needs and finding permanent stable housing. Father was incarcerated at the time.
- [3] Stacey Bechtel took over as family case manager (“FCM”) beginning in June 2017 while Mother was participating in the informal adjustment. In July, Bechtel investigated a report that Mother and H.M. were homeless, Mother had a positive drug screen for methamphetamine, and H.M. was underweight and possibly suffering from malnutrition. As a result of the investigation, H.M. was removed from Mother’s custody and a child in need of services (“CHINS”) case was initiated. At the time of H.M.’s removal, Father’s whereabouts were unknown. Father later appeared at an initial hearing in August and was present at the CHINS fact finding hearing in September. H.M. was adjudicated a CHINS and a dispositional decree and a parental participation plan were entered in October. Among other things, Father was ordered to enroll in programs recommended by DCS without delay and participate in those programs without missed appointments unless advance notice was given; maintain suitable, safe, and stable housing and a legal and stable source of income; not use any illegal controlled substances; obey the law; and attend all scheduled visitations.
- [4] When M.M. was born on May 8, 2018, it was reported that Mother had ongoing mental health needs that she was not addressing, and it was further reported that Mother’s parenting skills were of concern as were Father’s frequent incarcerations. DCS alleged that “[d]ue to issues involved in [H.M.’s] case, [M.M.’s] physical or mental condition is seriously impaired or seriously endangered . . . if [M.M.] is allowed to go to either [Mother’s] or [Father’s] care.” Index of Exhibits, Volume II at 140. M.M. was removed from Mother’s care,² and she was adjudicated a CHINS in August 2018. A dispositional decree and a parental participation plan with the same conditions as in H.M.’s CHINS case were entered in September.
- [5] Based on Father’s conduct as described below, DCS filed petitions for involuntary termination of both parents’ rights as to the Children in July 2019. In October, the juvenile court approved

¹ Mother’s parental rights to the Children were also terminated in this proceeding; however, Mother does not appeal. We have endeavored to limit the facts to those pertinent to Father except where necessary to understand the facts and course of the proceedings.

² M.M. was placed in the same foster home as H.M., and the Children remained in that home at the time of the termination hearing.

DCS' motions to terminate services for both parents. The termination hearing began in November 2020 and was completed in April 2021.

- [6] Bechtel was the FCM for sixteen months, from June 2017 to approximately October 2018. Father was in and out of jail the entire time Bechtel had the case. When Father was not incarcerated, he resided in several different places and had a variety of jobs. Referrals were placed for fatherhood engagement services and supervised visitation. Father participated in “some” fatherhood engagement sessions. Transcript, Volume II at 46. In March 2018, the National Youth Advocate Program (“NYAP”) received a referral from DCS to supervise visits between Father and H.M. “[A]ll meetings were either cancelled or [Father] . . . did not respond to . . . communications.” *Id.* at 23. In April, Father was incarcerated, and the referral was closed for non-compliance. Father was released from jail in May and NYAP received another referral pursuant to which they provided two home-based casework sessions and two supervised visits with H.M. in May, one supervised visit in June, and one supervised visit in July. Several other visits in June and July were cancelled by Father (and one visit was cancelled by NYAP) and the file was again closed in August for non-compliance. After M.M. was adjudicated a CHINS in August, Father had one supervised visit with her in October and participated in one fatherhood engagement session.
- [7] Bechtel testified that once Father was involved in the case, “he needed to . . . have stable housing and employment” and “prove that he can provide for his children.” *Id.* at 53-54. But while Bechtel had the case, “neither parent[] were really able to . . . demonstrate that they had stable housing or employment to reunify the family, and the parents did not fully participate and progress in the services to better prepare to be parents for the children.” *Id.* at 52. Father submitted to fourteen random drug screens while Bechtel was FCM. One screen in March 2018 was positive for amphetamine and methamphetamine; one in September was positive for amphetamine, methamphetamine, and THC; and in November, one test was positive for THC and another was positive for amphetamine and methamphetamine.
- [8] FCM Cassandra Poellot was assigned the case in April 2019.³ When Poellot took over the case, Father was incarcerated. Father was released in June and asked DCS to restart services, but then he was arrested and incarcerated again before that could be arranged. All told, Father was involved in five criminal cases during these proceedings and was incarcerated for “the majority” of the CHINS proceedings. *Id.* at 76.⁴ Father was released from incarceration in January 2021 and was initially residing with his girlfriend, although he provided only a post

³ There were two short-term FCMs between Bechtel and Poellot.

⁴ Father was sentenced in April 2017 for a 2016 charge of intimidation and sentenced to probation. In October 2017, he was charged with theft and sentenced in December to 240 days executed. In May 2018, he was charged with operating a vehicle after being adjudicated an habitual traffic violator (“operating while HTV”) and was sentenced in March 2019 to one year executed and his driving privileges were forfeited for life. In August 2018, he was charged with operating while HTV and was sentenced in March 2019 to 547 days to be served on home detention. And in July 2019, he was charged with escape for violating his home detention by removing his tracking device and was sentenced in August 2020 to 180 days executed. *See generally* Ex., Vol. I at 183-240.

office box as his address.⁵ He “changed locations a few times” after that and Poellot did not know where he was residing at the time of the termination hearing in April. *Id.* at 81. Father testified at the hearing that he was living in a shelter.

- [9] Poellot acknowledged there was nothing Father could do to alleviate the conditions necessitating the Children’s removal because his conduct was not the reason for their removal, but she also noted that he did not “display the stability or parenting abilities to care for the children either.” *Id.* at 101. Despite Father’s frequent incarcerations, “[h]e’s had several opportunities through services to display that he can parent and he was not compliant with any of those services when they were in place.” *Id.* at 102. Specifically, visitation with the Children was in place but Father did not attend the visits, which “would be the main way you would show your ability to care for kids.” *Id.* at 104. Moreover, Father’s pattern of incarceration shows his instability – “[h]e cannot provide stability or anything for children when he is incarcerated for as often as he’s been.” *Id.* at 105.
- [10] Poellot also testified that H.M. has degenerative rheumatoid arthritis for which chemotherapy has been recommended to put it in remission and keep it from causing more damage. M.M. has a chromosome duplication that can cause significant developmental delays and affects her aortic valve which could require surgery. Both diagnoses require ongoing medical care, and Poellot noted concerns about whether Father would be capable of ensuring the children received that care. After the Children’s foster mother informed her of the diagnoses, Poellot let both parents know. Since then, “they have not asked about the condition of the girls or how they are doing medically.” *Id.* at 91.
- [11] Debra Martin, the court appointed special advocate (“CASA”) for the Children since May 2019, testified that her concerns were that “both parents have been inconsistent in . . . the ability to keep a job or to keep a home. [Father] unfortunately has not been able to keep himself out of jail. [S]ince the CHINS case opened in 2017, he’s been in and out of jail. [A]nd I don’t feel like either parent is able to manage all of the needs that both girls have.” *Id.* at 112. Neither parent had shown the ability to put the Children’s needs first, and Martin believed it would be difficult for the parents to care for the Children even if they did not have special medical needs. Therefore, Martin believed it was in the Children’s best interests for parental rights to be terminated and for them to be adopted by their foster mother.
- [12] Father acknowledged that he was incarcerated off and on during these proceedings but said he had notified DCS immediately upon getting out of jail each time. He also acknowledged that he was often not out of jail long enough to get services started and that COVID-19 impacted the ability to get services in jail, but he did not think he had been given the time or opportunity to participate in the services DCS recommended, to get established in a job, and to find stable housing. He was living in a shelter at the time of the termination hearing but was to start a job immediately after the hearing ended. He testified he had completed a four-hour online parenting class required during his divorce, had not been in trouble in the several weeks between his most recent release from jail and the termination hearing, and had filed for a hardship license so he could get the Children to their medical appointments as necessary. He believed he had the knowledge and ability to parent the Children if given the opportunity to

⁵ Father and Mother divorced at the end of 2020.

do so and complained that he was unable to participate in services because his license was suspended and only fatherhood engagement provided transportation for him. Poellot, however, testified that Father never indicated to her that he was unable to participate in services because of transportation difficulties.

[13] The juvenile court announced its findings from the bench at the conclusion of the termination hearing:

I'm going to find today that DCS has proved by clear and convincing evidence that it is in the best interests of the children today, to have those rights with their natural mother and father terminated. I'm going to make those findings based upon the following reasons[:] . . . definitely a lack of proper housing and just financial stability on behalf of either or both parents to provide a roof over the children's heads and basic care needs. . . . And that there's been no progress on just their general ability to parent. There has been a lot of testimony about dad being incarcerated for most of the time, or a lot of the time, I guess I should say[,] . . . the last four years. But I am going to find today that . . . there's been substantial testimony to also let me know that during those times he was out of incarceration, which there were more than one period of time, that he also during those times, failed to step up like he should have done to learn to parent the kids[. E]ven though he was incarcerated at the initial time of the removal, and mom really had the allegations against her at the time of the removal, at any point when he's been out, he's not been appropriate for placement of the children. [H]e has not participated in services even though . . . there were brief periods of time he could have done so, he was terminated from those services, or closed out for no-shows and nonparticipation. There were some positive drug screens as well, and . . . who knows if there would have been more, because he's been incarcerated for the bulk of the case. . . . [S]till today, he's in a shelter. We have no housing for him. Although I will commend him for having a job that he's starting today. . . . [T]here's also no driver's license. So no ability to transport the kids and get them around. So what the Court's . . . been shown today by clear and convincing evidence, is that there's just no showing here that mom or dad can even provide for the basic needs of these kids by providing a roof over their head, food on the table, the love and care that they need, let alone . . . the extensive medical diagnoses for the children, and the needs that they're going to have going forward. [T]here was some testimony earlier about what these children need is a great supporter and advocate, and I don't find that they have that in mom and dad[.]

Id. at 131-33 (cleaned up).

[14] The juvenile court later issued a written order making formal findings of fact and memorializing its decision at the termination hearing:

A. Facts relating to initial removal of child[ren], CHINS Adjudication and Dispositional Order:

* * *

34. [H.M.] has remained out of both parents' care since July 11, 2017.

35. [M.M.] has remained out of both parents' care since May 10, 2018.

* * *

38. Father has a long history of criminal behavior including convictions for Intimidation, Theft, Vehicle Operation violations, and Escape from Home Detention.

39. Father failed to consistently visit the children or participate in services while he was not incarcerated.

40. DCS attempted to assist and provided services from February 2017 through October 2019, more than 2.5 years.

41. Parents have not been able to remedy reasons for removal since July 2017.

* * *

B. Facts Relating to Child[ren]'s Continued Removal from the Parent's Home and Care: Reasonable Probability of Parent Not Remediating Reasons for Removal, Threat to Child[ren]'s Wellbeing, Child[ren]'s Best Interest, and DCS Plan for Care and Treatment

* * *

2. Although Father was incarcerated at times during the case, he failed to participate in services when he was not incarcerated and has never been an appropriate placement for the children; Father has never demonstrated that

he has the ability to provide shelter, care, and supervision for the children. Father also had positive drug screens when he was not incarcerated and has not addressed substance abuse issues.

3. Both children have extensive medical needs and will have continued medical needs for the rest of their lives. Neither parent has demonstrated any ability to provide or procure the necessary medical care at this time, or in the future.

4. DCS' plan for Child[ren] is that they be adopted, this plan is satisfactory for Child[ren]'s care and treatment and an adoptive family has been identified.

5. The Child[ren]'s CASA/GAL is supportive of the plan of termination of parental rights and believes it is in the Child[ren]'s best interests to be adopted.

6. DCS believes it is in the best interests of the Child[ren] to be adopted.

* * *

10. Each of the above paragraphs is expressly adopted as the Court's own finding of fact. Each paragraph, independently and cumulatively, demonstrates this Court's finding that there is a reasonable probability that the conditions that resulted in the Child[ren]'s removal from the home of the [parents] will not be remedied, or that *continuation of the parent-child relationship poses a threat to the well-being of the Child[ren]*.

11. Each paragraph above also demonstrates the Court's finding that termination of the parent-child relationship is in the best interests of the Child[ren], and is expressly adopted as the Court's own finding of fact.

Appealed Order at 10-13 (emphasis added). Father now appeals.

Discussion and Decision

I. Standard of Review

[15] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). We acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” but we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights.” *In re I.A.*, 934 N.E.3d 1127, 1132 (Ind. 2010). Therefore, the law provides for the termination of parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children, and as such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. The purpose of terminating parental rights is to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[16] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship,⁶ including:

(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

DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2.

[17] If the juvenile court concludes the allegations of the petition for involuntary termination are true, “the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-8(a). In doing so, the juvenile court must enter findings supporting its conclusions. Ind. Code § 31-35-

⁶ There are four elements total that DCS must prove, but Father only challenges two.

2-8(c). We will not set aside the findings or judgment unless they are clearly erroneous. *Z.B. v. Ind. Dep't of Child Servs.*, 108 N.E.3d 895, 900 (Ind. Ct. App. 2018) (quotation omitted), *trans. denied*. To determine whether findings or a judgment are clearly erroneous, we consider whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment.⁷ *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We do not reweigh the evidence or judge the credibility of witnesses but consider only the evidence and reasonable inferences most favorable to the judgment. *In re E.M.*, 4 N.E.3d 636, 642 (Ind. 2014).

II. Sufficiency of the Evidence

A. Continuation of the Relationship

- [18] We acknowledge, as FCM Poellot did in her testimony at the termination hearing and as the juvenile court did in its ruling from the bench, that Father was not directly responsible for the conditions that led to the initial removal of the Children. Both Children were in Mother's care at the time they were removed, and the allegations of both CHINS petitions were focused on Mother. Thus, we cannot engage in the typical "remedy of conditions" analysis as to Father, which requires us to identify the conditions that led to removal and then determine whether there is a reasonable probability that those conditions will not be remedied. *In re E.M.*, 4 N.E.3d at 643.
- [19] However, contrary to Father's statement in his brief that the juvenile court "did *not* conclude that there was a reasonable probability that continuation of the parent-child relationship poses a threat to the well-being of the children[.]" Appellant's Brief at 13 (quotation marks omitted), the juvenile court *did* make such a conclusion, *see* Appealed Order at 13, ¶ 10. Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore, to terminate parental rights, the juvenile court needs to find that only one of the three requirements of that subsection has been established by clear and convincing evidence. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. Thus, the juvenile court's order can be sustained if there is sufficient evidence to support its conclusion that the continuation of the parent-child relationship poses a threat to the well-being of the Children pursuant to subsection (ii).
- [20] Neither actual physical abuse nor a physical threat to a child is required to find that continuation of the parent-child relationship poses a threat to a child's well-being. *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005), *trans. denied*. Instead, termination is proper when the evidence shows that the emotional and physical development of a child is threatened. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 94 (Ind. Ct. App. 2014). A juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re G.F.*, 135 N.E.3d 654, 661 (Ind. Ct. App. 2019). In addition, the juvenile

⁷ Father does not challenge the juvenile court's findings of fact, and therefore the unchallenged facts stand as proven. *See In re B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (failure to challenge findings by the juvenile court resulted in waiver of the argument that the findings were clearly erroneous), *trans. denied*.

court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding the termination. *Id.* at 660.

- [21] Father was incarcerated when DCS first became involved with H.M. and was therefore unable to step in and care for H.M. when Mother was struggling. He was similarly unavailable when CHINS petitions were filed as to H.M. and later, M.M. Father was incarcerated for “the majority” of the four years after the CHINS petitions were filed, resulting in him being unavailable to visit the Children, let alone parent them in any stable manner. Tr., Vol. II at 76. He attended only a handful of visitations with H.M. and only one visit with M.M. There was no testimony that he had any other contact with them beyond that. Although Father argues he was unable to participate in services while incarcerated and therefore was “at a substantial disadvantage at the termination hearing of demonstrating his willingness and ability to comply with services and provide for the care of the children[,]” Appellant’s Br. at 14, “[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children[,]” *K.T.K. v. Indiana Dep’t of Child Servs.*, 989 N.E.2d 1225, 1235-36 (Ind. 2013). Moreover, Father failed to meaningfully engage in services and especially visitations during the periods, however brief, when he was not incarcerated.
- [22] Father’s habitual pattern of conduct is highly relevant in determining whether the continuation of the parent-child relationship poses a threat to the Children, as it suggests a substantial probability of future neglect or deprivation. See *In re A.P.*, 981 N.E.2d 75, 81 (Ind. Ct. App. 2012). Father was already facing a criminal charge when DCS became involved with the family. Father’s commission of four additional crimes and submission of positive drug screens during these proceedings do not demonstrate a willingness or ability to provide for the care of the Children in the future. Father’s behavior during the four years leading up to the termination hearing plus the fact that he never inquired about the Children’s substantial and ongoing medical needs and has no apparent ability, financial or otherwise, to care for those needs established that he was not a safe or viable option for the Children.
- [23] After reviewing the evidence, it is clear the juvenile court was within its discretion to find that the continuation of the parent relationship posed a threat to the well-being of the Children. There can be little doubt that Father’s criminal propensity and frequent incarcerations detrimentally affected the Children who had minimal to virtually no contact with him throughout their young lives. Father’s failure to live a law-abiding life that would allow him to maintain stable employment and housing and the specter of his drug use renders the environment harmful at best and dangerous at worst. Father argues that he “was steadily working toward improving his employment situation and his residence situation [and] had goals to be able to provide a safe home and reliable income for the support of the children.” Appellant’s Br. at 15-16. But he had only begun making those efforts two months before termination – nearly four years after the CHINS proceedings were initiated. The juvenile court was not required to offer Father additional time under these circumstances to show the Children would be safe in his care.
- [24] In light of the unchallenged findings and the evidence set forth above, the juvenile court did not err in finding clear and convincing evidence showed continuation of the parent-child relationship posed a threat to the well-being of the Children.

B. Best Interests

- [25] The determination of a child’s best interests should be based on the totality of the evidence. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied*. A parent’s historical inability to provide a suitable environment, along with the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the child. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002).
- [26] Father contends the juvenile court erred in concluding termination was in the best interests of the Children because “[i]t would sever[] a relationship between a loving parent and two children, causing untold anguish and stress [to] everyone involved.” Appellant’s Br. at 18. But no evidence at the termination hearing supports *any* relationship between Father and the Children. Father saw H.M. a handful of times and saw M.M. once in 2018, and he has not seen them since. In addition, there was evidence that he had not even asked about their health after initially being informed of their significant medical diagnoses. H.M. has been with the foster family since she was just a few months old, and M.M. has been with them for her entire life. Father acknowledges that they are “thriving” in that home. *Id.* We have no doubt that termination has caused anguish and stress to *Father*, but we cannot say that it is not in the best interests of the Children for that reason. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013) (noting that in determining the best interests of the child, the juvenile court “must subordinate the interests of the parent to those of the child”).
- [27] FCM Poellot testified that DCS’ plan for the Children was termination and adoption by the foster family and CASA Martin testified that termination was in the Children’s best interests. That testimony, along with the evidence that the continuation of the parent-child relationship constitutes a threat to the well-being of the Children, is sufficient to show that termination is in the Children’s best interests. *See In re A.S.*, 17 N.E.3d at 1006 (“[W]e have previously held that recommendations of the case manager and [CASA], in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination of parental rights is in a child’s best interests[.]”). In sum, Father’s arguments amount to an improper request for us to reweigh evidence, which we will not do. *See R.S.*, 56 N.E.3d at 628. Clear and convincing evidence supports the juvenile court’s determination that termination is in the Children’s best interests.

Conclusion

- [28] The judgment of the juvenile court terminating Father’s parental rights is supported by clear and convincing evidence and it is not, therefore, clearly erroneous. The judgment of the juvenile court is affirmed.
- [29] Affirmed.

Pyle, J., and Weissmann, J., concur.