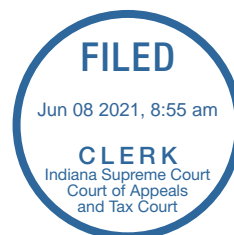


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT –
MOTHER

Ronald J. Moore
The Moore Law Firm, LLC
Richmond, Indiana

ATTORNEY FOR APPELLANT –
FATHER

J. Clayton Miller
Jordan Law, LLC
Richmond, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert J. Henke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re the Termination of the
Parent-Child Relationship of
Ad.P., Al.P., and A.S. (Minor
Children),
B.S. (Mother) and W.P. (Father),
Appellants-Respondents,

v.

Indiana Department of
Child Services,
Appellee-Petitioner.

June 8, 2021
Court of Appeals Case No.
21A-JT-95
Appeal from the Randolph Circuit
Court
The Honorable Jay L. Toney,
Judge
Trial Court Cause Nos.
68C01-2001-JT-1
68C01-2001-JT-2
68C01-2001-JT-3

Weissmann, Judge.

- [1] The youngest child of B.S. (Mother) and W.P. (Father) was born with drugs in her system, prompting the State to remove that child and her two older sisters from Mother and Father’s home. Three years later, the children remained in foster care, and, despite court-ordered services, Mother and Father’s substance abuse continued unabated. The juvenile court terminated the parental rights of Father and Mother—a determination Mother and Father now appeal. Finding the evidence supports the juvenile court’s judgments, we affirm.

Facts

- [2] Mother and Father are the parents of three girls: seven-year-old A.S., five-year-old Ad.P., and four-year-old Al.P (collectively, Children). Al.P. had drugs in her system at her birth in February 2017, and Mother tested positive for opiates, benzodiazepines, oxycodone, and marijuana. Father was incarcerated at the time for his failure to pay child support for his older children and had an outstanding warrant in another county. The Indiana Department of Child Services (DCS) removed all three children from Mother’s care and petitioned for a determination that they were children in need of services (CHINS). The juvenile court granted that petition based on Parents’ admissions as to Mother’s positive drug tests and Father’s incarceration.
- [3] The juvenile court ordered Parents to: refrain from illegal drug use; obey the law; engage in home-based counseling; complete parenting and substance abuse assessments and follow all resulting recommendations; submit to random drug

screens; attend all scheduled visitations and comply with visitation rules; and pay \$10 in weekly child support. For the next two years, Parents fully complied with that order for only three or four months. Children remained in foster care, and Parents never progressed to unsupervised visitation.

[4] Mother tested positive for drugs in about half of the screens she underwent during the CHINS proceedings. Father tested positive in approximately 40 percent of his drug screens. By August 2019, Parents were in jail, and Parents' supervised visitation had ended due to their non-compliance with the CHINS order. Mother had not complied with or completed drug treatment. Father had refused drug treatment, believing he did not need it. Both continued to test positive for drugs when they were not jailed.

[5] In early 2020, DCS petitioned to terminate the rights of Parents. The only service Father had completed at that point was a parenting class. Father never completed a substance abuse assessment. Neither Mother nor Father followed mental health treatment recommendations or consistently attended visitations with Children. Father had been in and out of jail throughout the CHINS proceedings, mostly due to his failure to support his older children. Tr. Vol. III, pp. 24-25. Mother spent fewer days in jail than Father, but she was arrested seven times during the fifteen months preceding the termination hearing. Mother appeared under the influence of drugs when she appeared for some visitations and the few therapy appointments she attended. Children have not seen Parents in more than 1 ½ years.

[6] The day before the first of two hearings on the petition, Parents tested positive for THC and oxycodone. Mother did not appear for the second hearing. The trial court terminated the parental rights of both Mother and Father, prompting both to appeal.

Discussion and Decision

Father challenges several of the juvenile court's findings as conflicting. Mother does not challenge any findings but, along with Father, contests the sufficiency of the evidence supporting the trial court's judgment. Finding no conflict in the findings and that the judgment is well supported by the evidence, we affirm.

I. Standard of Review

[7] To terminate the parental rights of Mother and Father, DCS was required to allege and prove by clear and convincing evidence:

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

[8] When reviewing the 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.*

II. Findings Are Not Erroneous

[9] Father challenges four of the trial court’s findings.¹ He first contends findings 147 and 149 conflict. In 147, the trial court found that “Father made minimal progress, overall, because Father always fell back into the same habits, including being in a relationship with Mother.” App. Vol. II, p. 142. In 149, the court found that “Father has not made any progress during the pendency of the underlying CHINS case.” *Id.* Whether Father made “no progress” as noted in 147 or performed slightly better by achieving “minimal progress” as noted in 149, Father did not do enough to prove he could parent Children appropriately. Therefore, both findings support the trial court’s termination of Father’s parental rights. Any conflict between the two findings constitutes harmless error at most. *See In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008), *trans. denied* (finding erroneous finding harmless).

¹As Mother does not challenge any of the trial court’s findings, we accept those findings as true when addressing her claims. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).

[10] Father also erroneously argues findings 47 and 137 conflict. In 47, the trial court found that “Mother and Father tested positive for the same substances when they submitted to drug screens.” App. Vol. II, p. 136. In 137, the trial court found that “Father tested negative for illegal substances for approximately a month while he was residing with Mother, and Mother was still testing positive for illegal substances.” *Id.* at 142. These findings do not conflict when viewed in the context of the termination judgment.

[11] Finding 47 is a summary of the testimony of a visitation supervisor about visitations early in the CHINS proceeding and is supported by drug screen results showing Mother and Father repeatedly tested positive for the same substances from February through June 2018 when neither was incarcerated. Tr. Vol. II, pp. 47, 61; Ex. Vol. V, pp. 49, 53, 55, 57, 59, 63, 66, 84; Ex. Vol. VI., pp. 8, 80, 82; Ex. Vol. VII, pp. 3, 6, 8, 13, 15, 21, 23. Finding 137 appears to relate to a specific period during March and the very beginning of April 2018 when Father tested negative for drugs for about a month while Mother did not. Tr. Vol. III, pp. 18-19; Ex. Vol. V, pp. 68, 71, 73, 76, 79; Ex. Vol. VII, pp. 47-54. The findings do not conflict.

III. Judgment Is Supported by Evidence

[12] Mother and Father separately challenge the sufficiency of the evidence supporting the termination of their parental rights. Father challenges the juvenile court’s dual finding and conclusion that there is a reasonable probability that continuation of the child-parent relationship poses a threat to

Children. Mother challenges the court's conclusion that DCS had a satisfactory plan for Children. Both parents contend the evidence does not support the trial court's conclusion that termination of their parental rights was in the best interests of Children.

A. Father's Arguments

[13] We need not address Father's claim that the juvenile court erroneously concluded, under Indiana Code § 31-35-2-4(b)(2)(B)(ii), that continuation of the parent-child relationship posed a threat to Children's well-being. This is because Father does not challenge the juvenile court's other conclusion, under Indiana Code § 31-35-2-4(b)(2)(B)(i), that there is a reasonable probability that the conditions that resulted in Children's removal or justified continued placement outside his home will not be remedied. Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so the juvenile court need only have entered one of those two conclusions to meet its requirements. *See Matter of J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019). As the "remedying conditions" conclusion stands unchallenged, the propriety of the "threat" conclusion is irrelevant.

[14] Even if that were not the case, Father's argument would fail. Father never completed a substance abuse assessment or program as ordered by the juvenile court. The evidence established he sorely needed such assistance. His only significant periods of sobriety during the pendency of this case were during his frequent incarcerations, which, in total, comprised about half of that three-year period. When not in jail, Father tested positive for THC, amphetamine,

methamphetamine, cocaine, and oxycodone. Father even tested positive for THC and oxycodone on the day before the termination of parental rights hearing.

- [15] To predict future behavior of a parent, the trial court should look at the parent's habitual patterns of conduct. *In re M.S.*, 898 N.E.2d 307, 311 (Ind. Ct. App. 2008). It “need not wait until a child is irreversibly influenced by a deficient lifestyle such that [the child’s] physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *Id.* Father has a habitual pattern of incarceration and substance abuse, with no evidence indicating those conditions are likely to change. The evidence supports the trial court’s conclusion that he is a threat to Children’s well-being.

B. Mother’s Arguments

- [16] Mother claims DCS failed to prove by clear and convincing evidence the existence of a satisfactory plan for the care and treatment of Children, as required by Indiana Code § 31-35-2-4(b)(2)(D). That plan need not be detailed “so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated.” *In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). A plan of adoption is a satisfactory plan even if DCS does not designate a specific placement. *Lang v. Stark Cnty. Off. of Fam. & Children*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*.
- [17] DCS Family Case Manager Andrea Boehm testified that Children’s adoption by their foster parents was in Children’s best interests. She noted Children felt

safe in their foster homes, had bonded with their loving foster families, and had improved significantly, both emotionally and physically. Although Mother vaguely alleges a problem in one of the foster homes, such an allegation, even if proven, would not render a plan of adoption inappropriate. The adoption court, not the termination court, decides whether a person is a suitable adoptive parent or if the foster home is an appropriate environment for the children. *See In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001), *trans. denied*. The evidence of a satisfactory plan was sufficient.

C. Parents' Joint Arguments

[18] Both Mother and Father challenge the juvenile court's conclusion that termination of their parental rights is in the best interests of Children. Parents note the evidence indicating they were bonded to Children when they were exercising visitation earlier in the CHINS proceeding. Mother notes they only became estranged due to the lack of visitation. But she fails to recognize that Parents' own actions—specifically, substance abuse—led to their loss of visitation and resulting estrangement.

[19] In determining the best interests of the child, a trial court is required to look at the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 224 (Ind. Ct. App. 2010), *trans. dismissed*. 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 children. *In re A.L.H.*, 774 N.E.2d 896, 930 (Ind. Ct. App. 2002). For more than three years, Parents'

continuing substance abuse and Father's repeated incarcerations have left them unable to provide a suitable environment for Children, and the record suggests that is not likely to change soon. Both chose to engage in drug use immediately before a hearing to determine their fitness to parent Children. Mother's mental health reportedly was so precarious that she was unable to attend the final termination hearing. Neither Parent is up to the task of parenting Children. Their drug use has been and likely will continue to be a threat to Children and to render Parents unable to fulfill their parental obligations.

[20] We affirm the juvenile court's termination of parental rights as to both Mother and Father.

Kirsch, J., and Altice, J., concur.