

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
C.D. (FATHER)

Jennifer A. Joas
Madison, Indiana

ATTORNEY FOR APPELLANT
R.F. (MOTHER)

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Abigail R. Recker
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination
of the Parent-Child Relationship
of: D.D. and L.D. (Minor
Children),

C.D. (Father) and R.F.
(Mother),

Appellants-Respondents,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

September 23, 2021

Court of Appeals Case No.
21A-JT-635

Appeal from the Jennings Circuit
Court

The Honorable Jon W. Webster,
Judge

Trial Court Cause Nos.
40C01-2001-JT-1
40C01-2001-JT-2

Weissmann, Judge.

- [1] Unable to show they could maintain long-term sobriety, C.D. (Father) and R.F. (Mother) (collectively, Parents) lost custody of their two children following CHINS cases spanning more than 3 years. Parents now appeal, arguing that the evidence was insufficient to support termination. Finding that the trial court's judgment was not clearly erroneous, we affirm the termination order.

Facts

- [2] Days after L.D.'s birth in January 2018, L.D. and her older sister D.D., born December 2016, were removed from Parents' care due to allegations of domestic violence, substance abuse, and worrisome home conditions. D.D. and L.D. (Children) were declared Children in Need of Services (CHINS) and Parents were ordered to participate in services. Children were placed with their Great Aunt and Great Uncle, who had previously adopted another of Mother's children. Both children have health issues that require monitoring. D.D. has an apparently benign tumor near her heart and spine and L.D. was born with serious health conditions that required her to be placed on a ventilator. L.D. still struggles with breathing issues.
- [3] Parents' methamphetamine addiction was the dominating concern of the CHINS cases. Parents achieved several months of sobriety in 2019—progress the Department of Child Services (DCS) recognized by foregoing termination and transitioning to unsupervised visits. But shortly before a trial home visit

scheduled for July 2019, Parents relapsed and continued testing positive for methamphetamine throughout the rest of the case.

[4] Parents also failed to regularly engage in court-ordered services. Parents began attending substance abuse programming in January 2020 and had “perfect attendance” until March, when services moved online or over the phone in response to the COVID-19 pandemic. After that, Parents’ attendance was spotty, and they “never reached a point where they were ready to be discharged from substance abuse services.” Father’s App. Vol. II, p. 49. Parents attempted inpatient drug rehabilitation in November 2020 but left within 24 hours.

Mother, who was pregnant, complained that she was not given enough to eat at the facility and feared for her pregnancy. Father left his program to give Mother a ride.

[5] DCS filed the current petitions for termination in January 2020, but due to continuances, the termination hearing was not completed until 13 months later. Following the hearing, the trial court found that Children had been removed from Parents’ care and under DCS supervision for at least 15 of the last 22 months, that there was a reasonable probability the conditions resulting in removal would not be remedied, that continuing the parent-child relationship posed a threat to Children, that termination is in Children’s best interests, and that DCS has a satisfactory plan for Children.

[6] Parents both appeal. Those appeals were consolidated pursuant to Indiana Appellate Rule 38(B).

Standard of Review

[7] Parents have a constitutionally protected interest in the care, custody, and control of their children, but that interest is not absolute. *In re I.A.*, 934 N.E.2d 1127, 1132 (Ind. 2010) (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)). The State may terminate parental rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008).

[8] 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.

(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). If the trial court finds these allegations are true by clear and convincing evidence, it shall terminate the parent-child relationship. Ind. Code § 31-35-2-8; Ind. Code § 31-37-14-2.

[9] We apply a two-tiered standard of review to a trial court’s termination of parental rights: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016) (citing *In re I.A.*, 934 N.E.2d at 1132). In reviewing the termination of parental rights, we do not reweigh evidence or judge witness credibility. *Id.* The judgment will be set aside only if it is clearly erroneous. *Id.*

Discussion and Decision

[10] Mother argues that the evidence was insufficient to show that continuing her relationship with Children poses a threat to them, that conditions leading to removal are unlikely to be remedied, and that termination is in Children’s best interests. Father also argues that the evidence is insufficient to show that termination is in Children’s best interests. Neither parent challenges the trial court’s factual findings, which we therefore accept as true. *In re S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019). Given the trial court’s findings detailing Parents’ ongoing struggles with drug abuse, we hold that Parents failed to show that the trial court’s order was clearly erroneous and affirm the trial court’s judgment.

I. Remedying Conditions & Threat to Children

[11] We first turn to Mother’s challenge to the trial court’s conclusions that there is a reasonable probability conditions will not be remedied and continuing the parent-child relationship poses a threat to Children.

[12] To determine whether conditions leading to removal will be remedied, we engage in a two-step analysis. *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015) (citing *In Re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014)). We first identify which conditions led to removal; then we determine whether, based on Mother's fitness at the time of the termination hearing, there is reasonable probability those conditions will not be remedied. *Id.* In evaluating the second step, the trial court uses its discretion to balance habitual patterns, including criminal history, neglect, and failure to provide support, against changed conditions. *In re E.M.*, 4 N.E.3d at 643.

[13] Drug abuse was the primary reason for removal. Father's App. Vol. II, p. 55. DCS pursued the underlying CHINS case after receiving a report of neglect alleging "domestic violence between the parents, substance abuse, and concerns about home conditions." *Id.* at 46. Children were removed after DCS received reports that L.D. was born drug exposed, that Mother tested positive for methamphetamine and amphetamine the day she gave birth to L.D., and that Mother tested positive for marijuana a few days later. Children were adjudged CHINS for these reasons and more, including Parents' evasion of DCS and L.D.'s hospitalization for health issues, perhaps caused by Mother's drug use. *Id.* at 47.

[14] Mother argues that by the time of termination, she was able to change all of the conditions leading to removal other than her methamphetamine addiction, and that she "had shown an ability to get her substance abuse under control and a

willingness to maintain sobriety for her children.” Mother’s Br., p. 18. Mother claims that on the date of termination, she had been sober for about 4 months.

[15] There is no evidence to support Mother’s claim of sobriety beyond her own averments because she did not respond to DCS’s requests for drug screens in the months between the bifurcated hearings. *Id.* at 51-52. Furthermore, the trial court’s unchallenged findings directly refute her claim. Based on Mother’s testimony, the trial court found that Mother had used within “a couple weeks” of termination. Father’s App. Vol. II, p. 54. In addition to chronicling repeated instances of positive drug tests, the trial court observed:

Both parents believe that their methamphetamine use does not present an issue in their parenting. . . . The fact that they seem wholly unconcerned with their current usage despite hearing the evidence of the impacts of their methamphetamine use on the parenting speaks volumes about where parents are at in their road to recovery.

Id. The court concluded, “parents have failed to address the main underlying reason why their children were removed – neglect due to substance abuse.” *Id.* at 55. Mother has failed to show that this conclusion is clearly erroneous.

[16] The trial court’s findings are also sufficient to support its conclusion that a continued relationship with Mother poses a threat to Children. Mother implies the trial court impermissibly terminated “solely because there is a better home available,” again failing to acknowledge the effect her addiction has on Children. *K.E. v. Ind. Dep’t of Child Servs.*, 39 N.E.3d 641, 649 (Ind. 2015). The

trial court need not wait until Children’s “physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *Id.*

[17] Both Children have “significant health issues that require proactive observation and supervision.” Father’s App. Vol. II, p. 53. Parents have proven unable to provide that supervision: their visit supervisor expressed concerns that Parents do not take L.D.’s breathing issues seriously. *Id.* The visitation supervisor also suspected that Parents were intoxicated during their supervised visitations with Children. *Id.* These findings, along with those outlined above, show that trial court’s threat analysis is not limited to permanency considerations. Its findings are sufficient to support the conclusion that a continued relationship with Mother poses a threat to Children’s wellbeing.

II. Children’s Best Interests

[18] Both Parents challenge the trial court’s conclusion that termination is in Children’s best interests. Mother emphasizes her close bond with Children, Parents’ suitable home and stable source of income, Parents’ diligence in participating in visitation, and Parents’ ability to provide for Children. Father

echoes these arguments.¹ Both Parents insist that despite their addiction, no harm ever came to Children in their care.

[19] A determination of best interests should be based on the totality of circumstances. *Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 373 (Ind. Ct. App. 2007). A parent's past and current inability to provide a suitable environment for their children supports a finding that termination is in the children's best interests. *Id.* Permanency is an important consideration in this determination. *K.T.K. v. Ind. Dep't of Child Servs.*, 989 N.E.2d 1225, 1235 (Ind. 2013).

[20] The trial court's findings support its conclusion that, based on the totality of circumstances, termination is in Children's best interests. Even after 3 years of court intervention and assistance, Parents have not demonstrated a capacity for the long-term sobriety Children need. The trial court found that Parents believe their methamphetamine use does not affect their parenting. Father's App. Vol. II, p. 54. The court also found:

The increased medical needs of the children require parents who are not using methamphetamine and who are able to consistently monitor the children and seek appropriate medical treatment when required. Caregivers for these children need to have a high level of sound judgment, focus, and attention, all of which are

¹ Father also argues that guardianship, rather than termination, is appropriate. Because Father raises this argument for the first time on appeal, it is waived. See *In re Involuntary Termination of Parent-Child Relationship of B.R.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) ("In order to properly preserve an issue on appeal, a party must, at a minimum, 'show that it gave the trial court a bona fide opportunity to pass upon the merits of the claim before seeking an opinion on appeal.'" (quoting *Cavens v. Zaberdac*, 849 N.E.2d 526,533 (Ind. 2006))).

lacking in Mother and Father. The health concerns of the children elevate their risk for serious harm due to neglect.

Id. at 56. These findings show that Parents were not and are not able to provide a suitable environment for Children.

[21] Finding the evidence sufficient to support the trial court's conclusions, we affirm termination as to both Parents.

Mathias, J., and Tavitas, J., concur.