

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In the Matter of:

T.B. and A.L., (*Minor Children*),  
and  
T.L. (*Mother*) and R.B. (*Father*),  
*Appellants-Respondents*,

v.

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

September 15, 2022

Court of Appeals Case No.  
22A-JT-296

Appeal from the Elkhart Circuit  
Court

The Honorable Elizabeth A.  
Bellin, Magistrate

The Honorable Michael A.  
Christofeno, Judge

Trial Court Cause Nos.  
20C01-2107-JT-23,  
20C01-2107-JT-24

**Robb, Judge.**

## Case Summary and Issue

- [1] T.L. (“Mother”) and R.B. (“Father”) (collectively, “Parents”) are the biological parents of two children, A. and T. (collectively, “Children”). Children were removed from Parents’ care by the Indiana Department of Child Services (“DCS”) in 2019 and adjudicated to be Children in Need of Services (“CHINS”) in early 2020. In 2022, the juvenile court terminated Parents’ parental rights to Children. Parents now appeal, raising one issue for our review: whether DCS proved by clear and convincing evidence that Parents’ parental rights should be terminated. Concluding the termination order is supported by clear and convincing evidence, we affirm the judgment of the juvenile court.

## Facts and Procedural History

- [2] DCS became involved with the family in November 2019 after Mother dropped Children off with their paternal grandfather for a weekend and then could not be found when grandfather tried to return Children to her as planned. Mother could not be reached for approximately two weeks. In a petition filed in December, DCS alleged Children were CHINS due to abandonment, poor hygiene, reports that Mother had been using methamphetamine, and the fact that Father was incarcerated at the time. Children were adjudicated CHINS in January 2020 and placed in foster care, and Parents were ordered to participate in reunification services.

[3] Progress reports throughout the CHINS case showed Father was not participating in any services, including visitation, even during periods when he was not incarcerated. Mother was participating in supervised visits with Children, which generally went well, but not completing other court-ordered services. She was inconsistent in complying with drug screens and had some positive screens, one of which led to her incarceration for a probation violation; failed to follow through on treatment after completing a substance abuse assessment; and was inconsistent in participating in home-based case work intended to help her deal with housing and transportation issues. DCS filed a petition seeking to involuntarily terminate Parents' parental rights on July 29, 2021, and an evidentiary hearing was held in January 2022.

[4] At the evidentiary hearing, DCS offered evidence that Mother was not in compliance with the case plan, which included a clinical assessment, drug and alcohol assessment, supervised visits, home-based case management services, and individual therapy. Mother did complete a substance abuse assessment in June 2021 but did not complete the intensive out-patient group program recommended by the assessment after three tries. She was not compliant with drug screens, as she failed a drug screen that led to her incarceration for two months for a probation violation, tested positive for amphetamines and methamphetamine in the last screen she submitted for DCS in August 2021, and failed to appear for the last requested screen in December. Mother was also not participating in individual therapy, attending only the initial session and failing to return thereafter. Mother was "pretty compliant" with scheduled

supervised visits with Children and the visits had increased in length over time, although they did not progress to partially supervised or unsupervised visits. Transcript, Volume II at 166. However, Mother came prepared for visits and there was a bond between Mother and Children. The family consultant who supervised visits also drove Mother to the visits and did case work with her on the drive. Prior to that arrangement, Mother was not consistent in participating in home-based case work. Even with that arrangement, the consultant felt more time each week was needed to make progress on Mother's housing and transportation goals. Mother offered evidence that she had been regularly employed, although she was temporarily laid off at the time of the hearing, and that she had been recently evicted from her house but was on a waiting list for Section 8 housing.

[5] DCS also offered evidence that Father was not in compliance with the case plan. He did participate in a DNA test to confirm his paternity of Children. But he did not participate in any services including supervised visits, partly due to his incarceration and partly due to his failure to maintain contact with DCS when he was not incarcerated. Father had only seen Children once, several years before these proceedings. At the October 2020 permanency hearing, Father indicated that he was likely to go back to prison in January for at least ten years and did not want “to pop into [Children’s] lives just to be ripped out of it again” and he would just “like to see them cared for.” *Id.* at 61-62. But at the evidentiary hearing in January 2022, Father testified that there was a possibility he could be released in a few months. He acknowledged he did not

have a relationship with Children and did not have a background of caring for them but said he would have a home and a job upon his release and could most certainly care for them if he had some guidance. “If given the opportunity to be there, yes, I would like to be there.” *Id.* at 155. Father also advocated for Mother, stating that “she has it in her to be a terrific mom.” *Id.*

[6] Both Children have special needs. T. is autistic and attends a special school and therapies. A. has behavioral issues that are treated with medication management and therapy. The DCS family case manager had concerns that Parents would not be able to attend to those needs because “they’re very difficult” and Parents “have a hard enough time taking care of their [own] wellbeing to be able to take care of the kids’ wellbeing.” *Id.* at 171-72. Neither child’s special needs were being addressed prior to removal from Mother’s care.

[7] The DCS family case manager and the court appointed special advocate (“CASA”) for Children both testified they believed it was in the best interest of Children for parental rights to be terminated. At the conclusion of the hearing, the juvenile court stated its conclusions from the bench and terminated Parents’ parental rights, issuing a written order later that provides, in pertinent part:

(B) There is a reasonable probability that the conditions that resulted in the children’s removal will not be remedied, and a continuation of the parent child relationship poses a threat to the well-being of the children.

1. While Mother has been consistent with the one day a week supervised visitation with her children, she has done

little to avail herself of the services or opportunities offered to her.

2. When looking at Mother's pattern of conduct at the time of the termination, there has been [a] pattern of non-compliance with services offered.

3. At the time of the termination hearing, neither parent can provide adequate housing for the children.

4. Despite having periods of time after the filing of the CHINS petition when Father was not incarcerated, he did not engage in any services to assist with reunification.

5. While Mother did establish a bond with both children, she is not stable enough to address the difficult special needs of either child.

(C) Termination is in the best interest of the Children in that:

1. These children need permanency.

2. Both parents present both a historical inability to provide for these children and a current inability.

3. CASA believes that termination would be in the best interest of both children, as does the DCS [Family] Case Manager.

4. Both children need regular schedules and structure that neither parent can provide; current placement has been able to address both structure and therapy.

Appealed Order at 2-3 (citations omitted). Parents now appeal the termination order.

## Discussion and Decision

### I. Standard of Review

- [8] Although the parent-child relationship is protected by the Fourteenth Amendment to the United States Constitution, *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014), 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).
- [9] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must prove by clear and convincing evidence to terminate a parent-child relationship,<sup>1</sup> 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.

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<sup>1</sup> There are four elements total that DCS must prove, but Parents only specifically challenge two. *See* Brief of Appellants at 13.

(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 . . . .

Ind. Code § 31-35-2-4(b)(2); Ind. Code § 31-37-14-2.

[10] 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), and must enter findings supporting its conclusion, Ind. Code § 31-35-2-8(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*. If the evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment, the judgment is not clearly erroneous. *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. Judgment of Termination

### A. Findings of Fact

- [11] Parents challenge two of the juvenile court's findings of fact as clearly erroneous: that Mother's failure to complete the IOP program was due to her failure to attend and follow through, Appealed Order at 2, ¶¶ 7-8, and that Mother's housing was unstable and her failure to secure government housing was due to a lack of follow through, *id.* at ¶ 9. Findings are clearly erroneous only when the record contains no facts or inferences to support them. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997).
- [12] First, we note again that weighing evidence is the juvenile court's prerogative and on review, we consider only the evidence most favorable to the judgment. *See E.M.*, 4 N.E.3d at 642. Second, the juvenile court's findings reflect the court's weighing of the evidence and judging of the witnesses' credibility. *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 553 (Ind. Ct. App. 2014). In other words, just because Mother testified to something different than what the juvenile court found does not make a finding clearly erroneous if there is other evidence in the record supporting it.
- [13] With respect to the IOP program, the evidence shows Mother attempted to complete the program three times. The first time, she completed eleven of twenty-four sessions and was discharged for lack of attendance. The second time, she only completed six of the sessions and was again discharged. And the final time, shortly before the termination hearing, she completed twenty-two

sessions and then tested positive for COVID-19. Although that was an excused absence, after Mother tested negative, she did not return to the program as scheduled. The evidence supports the juvenile court's finding regarding Mother's participation in the IOP program.

[14] And with respect to Mother's housing, the family consultant who did home-based case work with Mother testified that the goal of the case work was to help Mother reach out to community resources for housing and transportation. When asked what progress Mother had made regarding housing, the consultant replied, "Not much. . . . I'd have to say none at all." Tr., Vol. II at 184. Mother only consistently participated in case work when the consultant began offering it during drives to visitation, but even then, the consultant believed more time would have been beneficial. At the initial CHINS hearing in 2019, Mother said she did not have permanent housing. *See id.* at 22. And at the termination hearing in January 2022, Mother testified she had recently been evicted and did not have current housing but was on the waiting list for Section 8 housing. *See id.* at 112. The evidence supports the juvenile court's finding regarding Mother's unstable housing situation.

[15] We accept the remainder of the unchallenged findings of fact as true. *In re S.S.*, 120 N.E.3d 605, 609 n.2 (Ind. Ct. App. 2019).

## **B. Remedy of Conditions/Continuation of Relationship**

[16] Parents challenge the juvenile court's conclusions that there is a reasonable probability that the conditions that resulted in Children's removal will not be

remedied and that a continuation of the parent-child relationship poses a threat to Children's well-being. See Ind. Code § 31-35-2-4(b)(2)(B).

[17] The juvenile court need not have made both conclusions. This element of the statute is stated in the disjunctive, and therefore, DCS only has to prove there is a reasonable probability that *either* removal conditions will not be remedied *or* the children's well-being is threatened by continuing the relationship. *In re S.K.*, 124 N.E.3d 1225, 1233 (Ind. Ct. App. 2019), *trans. denied*. Likewise, we need not address both prongs, *id.* at 1234, and we choose to begin by addressing whether the evidence proves continuation of the parent-child relationship poses a threat to the well-being of Children.

[18] "When the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate." *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). The juvenile court made the following findings regarding Children:

17. [T.] has significant needs, as he is autistic and he is required to attend a special school to address his autism.

18. [A.] also has special needs, and is in therapy to assist in addressing behavioral issues related to past trauma.

19. The DCS [family] case manager does not feel that the children's needs will be met if they are reunified with either parent.

Appealed Order at 2.

[19] The evidence showed that at the time of removal, T. was five and A. was four. Mother had T. evaluated by First Steps while he was still in her care, and she was told T. was likely autistic and should see a specialist and get tested. Mother contacted First Steps because she had noticed that T. was “a little slower than what he should have been, . . . as far as . . . stages that he goes through[.]” Tr., Vol. II at 123. But she “didn’t push it too much” because Father’s brother was also behind in his developmental milestones as a child and they felt maybe T. would catch up like his uncle had. *Id.* at 124. Therefore, Mother did not follow up and T. was not diagnosed until after the CHINS case began.

[20] Children’s foster parent testified T. could not talk and was not potty-trained when he was placed with her. She described A. as “more of a caretaker to [T.] than a sibling to him.” *Id.* at 200. A. was also “very, very angry” and “[s]he would yell, she would scream, she would throw anything she could get her hands on.” *Id.* Following an evaluation, A. was put on medication to address her behavioral issues and her extreme behaviors subsided. Therapists for Children testified that they both need a strict routine, structure, and consistency. The family case manager testified that she did not believe Parents could attend to Children’s special needs because “they’re very difficult. They need [the] proper . . . person[] to do it and, at this time, both parents are not stable[.]” *Id.* at 171-72.

[21] Despite knowing T. was “a little behind all the time,” Parents did not take steps to address his issues prior to the CHINS proceeding, resulting in him not being

potty trained or able to verbally communicate at five years old. Tr., Vol. II at 123. Neither Parent complied with the case plan or improved their parenting skills during the CHINS proceeding, and neither was in a stable enough position at the time of the termination hearing to offer Children the structure and consistency their particular needs required. In light of these facts and circumstances, the juvenile court did not err by concluding there is a reasonable probability continuation of the parent-child relationship poses a threat to Children's well-being.

### **C. Best Interests**

[22] Parents also challenge the juvenile court's conclusion that termination was in Children's best interests. In determining the best interests of the children, the juvenile court must look beyond the factors identified by DCS and consider the totality of the evidence. *C.A. v. Ind. Dep't of Child Servs.*, 15 N.E.3d 85, 94 (Ind. Ct. App. 2014). A parent's historical inability to provide a suitable environment for the children coupled with the parent's current inability to do the same supports a conclusion that termination is in the best interests of the children. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013). Recommendations of the family case manager and CASA, along with evidence that continuation of the parent-child relationship poses a threat to the children's well-being, are also sufficient to show by clear and convincing evidence that termination is in the children's best interests. *Id.*

[23] Here, we agree with the juvenile court's conclusion that continuation of the parent-child relationship poses a threat to Children's well-being because Parents

showed a historical and current inability to care for their special needs. Moreover, the family case manager and CASA both testified termination was in Children’s best interests. We acknowledge the evidence that Mother interacts well with Children during supervised visits and that they share a bond, but “[a]lthough parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents.” *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Here, Father admitted he had no relationship with Children due to being incarcerated for most of their lives. As for Mother, as DCS said at the termination hearing, “This isn’t about love. [We] don’t doubt that Mom loves her kids. . . . [B]ut it is about her ability to care for their needs.” Tr., Vol. II at 231. And in this case, the evidence clearly and convincingly shows that Mother is not able to adequately attend to Children’s needs. Sufficient evidence supports the juvenile court’s conclusion that termination is in Children’s best interests.

## Conclusion

[24] The juvenile court’s termination order is supported by clear and convincing evidence. We therefore affirm the judgment.

[25] Affirmed.

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