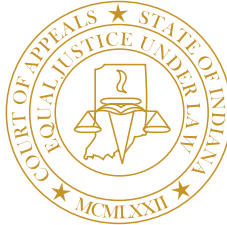


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

In Re: The Termination of the Parent-Child Relationship of
J.R., K.R., and L.R. (Children),

and

B.R. (Father) and G.R. (Mother),

Appellants-Respondents

v.

Indiana Department of Child Services,

Appellee-Petitioner

September 6, 2024

Court of Appeals Case No.
24A-JT-881

Appeal from the Parke Circuit Court
The Honorable Samuel A. Swaim, Judge
Trial Court Cause Nos.
61C01-2311-JT-155

Memorandum Decision by Judge Mathias
Chief Judge Altice and Judge Bailey concur.

Mathias, Judge.

- [1] The Parke Circuit Court terminated B.R.’s (“Father’s”) and G.R.’s (“Mother’s”) parental rights to their three children. Father and Mother (collectively, “Parents”) appeal and have filed separate briefs and appendices. Father presents two issues on appeal:

I. Whether two of the trial court’s findings of fact are supported by clear and convincing evidence; and,

II. Whether the trial court’s order terminating his parental rights to the children is clearly erroneous.

Mother argues only that DCS failed to prove that termination of her parental rights was in the children’s best interests.

- [2] Concluding that neither Father nor Mother has demonstrated any reversible error, we affirm.

Facts and Procedural History

- [3] Mother and Father have three children: L.R., born in March 2019, and twins K.R. and J.R., born in January 2022. Mother has a history of involvement with DCS. Maternal grandmother has guardianship over Mother’s two oldest

children because of that history. And L.R. tested positive for methamphetamine at birth, which resulted in Mother's second case with DCS. After that case was resolved, L.R. remained in Mother's care.

[4] In May 2022, DCS became involved with the family for a third time and provided services to Parents through an informal adjustment.¹ DCS was concerned with the children's well-being because of the condition of the home, use of drugs by people residing in the home, lack of supervision of the children, and Parents' failure to ensure that their infants had a safe sleeping environment. Parents' home was filthy with animal feces throughout the home. The children were often left outside without supervision, and they were not bathed regularly. Parents did not resolve DCS's concerns, and Father tested positive for methamphetamine. Mother eventually admitted that she was not taking medications for her mental health conditions and that she was unable to care for the children on her own.

[5] Because Parents failed to make progress with DCS's concerns, in July, DCS removed the children from Parents' care and filed a petition alleging that L.R., K.R., and J.R. were Children in Need of Services. The children were placed in foster care. In November, Parents admitted that the children were CHINS. The

¹ On some date during the CHINS proceedings, Parents began living in separate households. Parents are now divorced, but the date of their dissolution is not in the record before us.

trial court issued its dispositional order on December 19 and ordered Parents to participate in numerous services.

[6] During the CHINS proceedings, Parents were only partially compliant with services. Mother was semi-compliant with visitation, and she participated in home-based therapy and casework. However, Mother continued to test positive for THC and had a positive screen for methamphetamine. Mother was romantically involved with M.A., who had been charged with strangulation, domestic battery, and resisting arrest. Mother, who was pregnant with M.A.'s child, was the victim of the strangulation and battery offenses.²

[7] Father continued to test positive for methamphetamine and amphetamine. Father was incarcerated for possession of methamphetamine in December. Father was charged with possession of methamphetamine for a second time in June 2023. He was released to probation on October 13 and began court-ordered inpatient substance abuse treatment. Father also failed to participate in visitation with the children and failed to communicate with service providers.

[8] Because Parents were not compliant with services, DCS filed a petition to terminate Parents' parental rights on November 3. The trial court held the fact-finding hearing on January 24 and February 9, 2024. Father did not appear at the February hearing. The Court Appointed Special Advocate ("CASA") and

² Mother gave birth to V.A. in August 2023. V.A. initially remained in Mother's care after she also was adjudicated a CHINS. But she was removed from Mother's care after Mother tested positive for illegal substances. Tr. Vol. 3, p. 4.

family case manager testified that termination of Parents' parental rights would be in the children's best interests. Tr. Vol. 2, pp. 231-32; Vol. 3, p. 18. The family case manager testified that the plan for all three children is adoption. L.R. was in a pre-adoptive placement, but the case manager was not sure whether the twins' foster parents were willing to adopt them. Tr. Vol. 3, p. 21.

[9] Mother admitted to continued substance abuse issues, and she tested positive for methamphetamine in December 2023. She testified that she was still in a relationship with M.A., who had also tested positive for methamphetamine and marijuana. The court issued a no-contact order between M.A. and the children. M.A. often stayed at Mother's home, but he would leave during Mother's visitation with the children. Mother admitted to the court and to her service providers that M.A. abuses her physically and emotionally. Tr. Vol. 2, pp. 70-71, 146, 207. Mother consistently participated in services but did not benefit from those services. She often failed to interact with the children during visitation, and many visits were ended due to safety concerns. *Id.* at 108, 111-12, 117-18.

[10] During the CHINS and termination proceedings, Father did not consistently visit with the children, and he is not bonded with them. Father was often "disengaged during visits." *Id.* at 120, 126. Father also failed to communicate with DCS service providers. Father was participating in a court-ordered inpatient treatment program, and, upon completing the program, he intended to live with his mother and brother. However, Father's brother also has substance abuse issues. The CASA testified that Father's recent sobriety was laudable, but

she had concerns that he would struggle with substance abuse when he left inpatient treatment. Tr. Vol. 2, p. 230.

[11] On March 22, 2024, the trial court issued an order terminating Mother's and Father's parental rights to L.R., K.R., and J.R. In the order, the trial court acknowledged Father's more recent efforts to participate in services and inpatient treatment but concluded that his "last minute efforts do not outweigh the pattern of conduct for years." Father's App. p. 91.

[12] Ultimately, the trial court concluded that

[t]he circumstances present within the home—namely, Mother continuing to engage in a relationship which involves domestic violence and is with a methamphetamine user and Father's continued lack of commitment to the children as evidenced by his consistent failure to visit the children and long-standing pattern of substance abuse—present a danger to the well-being of the [children] and make termination in the [children's] best interest[s].

Id. at 94; Mother's App. p. 73. The court also concluded that

Mother is currently in a relationship with domestic violence. Children who are in homes with domestic violence suffer harm, and the Court must consider the needs of the children. Mother has admitted to several individuals that domestic violence has occurred between herself and [M.A.]. The unfortunate pattern of domestic violence and substance use makes the home unsafe for the [children] and reunification impossible. Additionally, Father remains an unsafe placement as he has demonstrated a lack of commitment to the children. Father has never had consistent visitation throughout the life of this CHINS matter and has been

unwilling to make attempts to alter his schedule to visit with the children. Additionally, while [Father] is currently in treatment, he intends to return to an environment with an active methamphetamine user. Mother attempted to utilize this fact to cause Father to relapse following the first day of fact finding in this matter.

The Court specifically finds that the reasons for removal have not been remedied. Mother continues to test positive for [m]ethamphetamine and has not appropriately addressed the issues within her home. [Father] is in inpatient treatment[;] however, his refusal to seek a home free from substance abuse following his completion of that program demonstrates his lack of commitment to sobriety. Additionally, both parents have [had] positive screens during the period of the CHINS case. The Court finds Mother's continued substance abuse and domestic violence dangerous, neglectful, and a continuing barrier to reunification. The Court finds Father's continued substance use and lack of commitment to the children dangerous, neglectful, and a continuing barrier to reunification.

Father's App. pp. 94-95; Mother's App. pp. 73-74. The court also concluded that termination of the parent-child relationships was in the children's best interests. Father's App. p. 95; Mother's App. p. 74.

- [13] Mother and Father now appeal the trial court's order terminating their parental rights to their children.

Standard of Review

- [14] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230-31 (Ind. Ct. App. 2019). In analyzing the trial court's

decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court's judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[15] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court's findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; second, we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. We will accept unchallenged factual findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

[16] It is well-settled that the parent-child relationship is one of society's most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind.*

Code § 31-35-2-4(b)(2) (2023).³ Only two of those elements need to be addressed in this appeal: (1) whether there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside of Father's home will not be remedied; and (2) whether termination of Father's and Mother's parental rights is in the children's best interests. I.C. § 31-35-2-4(b)(2)(B)(i) and (C).

- [17] Clear and convincing evidence need not establish that the continued custody of a parent is wholly inadequate for a child's very survival. *Bester*, 839 N.E.2d at 148. It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

Father's Challenges to the Order Terminating His Parental Rights

- [18] Father raises three issues in his Appellant's Brief: 1) whether two of the trial court's findings of fact are supported by clear and convincing evidence, 2) whether DCS proved that the conditions that led to the children's removal will not be remedied, and 3) whether termination of his parental rights is in the children's best interests.

³ The legislature has amended this statute effective March 11, 2024. Rather than subsection (b), the relevant provisions are now found in subsection (d).

Findings of Fact

- [19] First, Father argues that Finding Number 28, which states, “Mother has admitted to several individuals that she and Father continue to use substances and have a domestically violent relationship” is not supported by the evidence. Father’s App. p. 88. Mother hypothesizes, and DCS agrees, that this finding is not a reference to Father, but to her boyfriend, M.A. We agree with Father that there was no evidence that he and Mother have a violent relationship. The evidence presented at the fact-finding hearing established that only Mother and M.A. have a violent relationship. And, as to Father’s substance abuse, the evidence established that, in the months leading up to the fact-finding hearing, Father had been sober for several months while in jail and during his participation in an inpatient treatment program.
- [20] We therefore agree with Father that, as it relates to him, Finding Number 28 is not supported by the evidence. But this error is harmless, i.e., it is “sufficiently minor so as not to affect” Father’s “substantial rights.” See [Ind. Appellate Rule 66\(A\)](#); *A.J. v. Marion Cnty. Off. of Fam. & Child.*, 881 N.E.2d 706, 715 (Ind. Ct. App. 2008) (explaining that erroneous findings of fact are harmless if the court’s unchallenged or otherwise valid findings still support its judgment). In the remainder of its order, the trial court considered Mother’s history of domestic violence only as it related to her relationship with M.A. And the trial court acknowledged Father’s recent sobriety.
- [21] Next, Father argues that Finding Number 33(h), which states that a therapist “testified that Father’s brother is in active substance use and is a substantial

trigger for Father” is not supported by the record. *Id.* at 90. DCS presented evidence that Father’s brother also used methamphetamine. And his therapist testified that Father “sometimes, . . . is still around people that could trigger him [to relapse], like, his brother.” Tr. Vol. 2, pp. 213-14. Accordingly, this finding is supported by the evidence, and Father’s argument is merely a request to reweigh the evidence and the credibility of the witnesses, which we will not do.

Conditions that Led to Removal

[22] We now turn to Father’s argument that DCS failed to prove that the conditions that led to the children’s removal will not be remedied. Consideration of this argument involves a two-step analysis: first, identifying the conditions that led to removal, and, second, determining whether there is a reasonable probability those conditions will be remedied. *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014). In the second step, the trial court determines a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions; in other words, the court must balance a parent’s recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* In conducting its analysis, the trial court may also consider the reasons for the child’s continued placement outside the home. *In re N.Q.*, 996 N.E.2d 385, 392 (Ind. Ct. App. 2013).

[23] The children were removed from Father’s home, in part, because of Father’s substance abuse, the unsafe conditions of the home, the lack of a sober

caregiver, and the lack of supervision of the children. Father argues that he presented evidence that he is sober and that his mother's home would be a safe environment for his children if they are returned to his care.

[24] It is undisputed that Father had maintained sobriety for several months leading up to the fact-finding hearing. The trial court acknowledged Father's sobriety, and we applaud his efforts. But we also observe that Father has not demonstrated his ability to remain sober when he is not in jail or in an inpatient treatment program. Father was still participating in a court-ordered inpatient treatment program at the time of the fact-finding hearing. The trial court weighed Father's recent sobriety against his historical pattern of conduct and concluded that his "last minute efforts do not outweigh the pattern of conduct for years." Father's App. p. 91.

[25] The trial court also questioned Father's commitment to sobriety due to Father's expressed intent to live with his mother, where his brother, who is also a methamphetamine user, resides. Father's therapist testified that Father could more easily relapse if he lives with, or spends significant time with, his brother or other methamphetamine users. Tr. Vol. 2, pp. 213-14. The trial court was free to discredit Father's claim that his brother was also sober on the date of the fact-finding hearing.

[26] Throughout the CHINS and termination proceedings, Father failed to establish a stable and safe home. Father has also not demonstrated that he is able to care for his young children or properly supervise them. We hope that Father

maintains his sobriety, but, even if he does so, Father has not remedied the other conditions that led to the children's removal.

- [27] For these reasons, we conclude that DCS presented sufficient evidence to prove that the conditions that led to the children's removal from Father's home will not be remedied.⁴

Children's Best Interests

- [28] Finally, relying on his recent sobriety and history of employment, Father argues that terminating his parental rights is not in the children's best interests. In determining what is in a child's best interests, a court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep't of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent's historical inability to provide "adequate housing, stability, and supervision," in addition to the parent's current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*
- [29] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep't of Child Servs. (In re J.S.)*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009). "The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship." *Id.* Moreover, this Court has previously held that recommendations of the

⁴ Given our holding, we need not consider Father's alternative argument that DCS failed to prove that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the children's well-being.

family case manager and court-appointed special advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

[30] First, we observe that both the CASA and family case manager testified that termination of Father's parental rights was in the children's best interests. Tr. Vol. 2, pp. 231-32; Vol. 3, p. 18. And we agree with the trial court that

Father remains an unsafe placement as he has demonstrated a lack of commitment to the children. Father has never had consistent visitation throughout the life of this CHINS matter and has been unwilling to make attempts to alter his schedule to visit with the children.

Father's App. p. 94. Moreover, Father continued to show his lack of commitment to the children when he failed to appear for the second day of the factfinding hearing. Throughout these proceedings, Father has not demonstrated that he is willing and able to provide the children with a safe, appropriate, and stable home.

[31] For all of these reasons, DCS proved that termination of Father's parental rights is in the children's best interests.

Mother's Challenges to the Order Terminating Her Parental Rights

[32] In her brief, Mother argues only that DCS failed to prove that termination of her parental rights was in the children's best interests. She contends that she

shares a strong bond with her children, that the twins are not in a pre-adoptive home, and that termination of her parental rights will result in the children being separated from their siblings.

[33] Mother and the children are bonded. Yet, she was still involved in a romantic relationship with M.A. at the time of the fact-finding hearing, who was ordered to have no contact with the children. Mother admitted that M.A. was physically violent and emotionally abusive. M.A. has been charged with strangulation and domestic battery. Mother, who was pregnant with their child, was the victim of those offenses. Mother continued to use illegal substances throughout these proceedings and failed to demonstrate that she could provide the children with a safe home. Sadly, termination of Mother's parental rights means that the children will not be raised together in one home. But giving the children the opportunity to grow up in safe, stable, and appropriate homes is of utmost importance. And although the twins may not be in a pre-adoptive placement, DCS planned to find them an adoptive placement if their current foster parents decide not to adopt them.⁵ We agree with the trial court that Mother's "unfortunate pattern of domestic violence and substance use makes the home unsafe for the [children] and reunification impossible." Mother's App. p. 73. Finally, both the CASA and family case manager testified that

⁵ Mother does not argue that DCS failed to prove that it had a satisfactory plan for the care and treatment of the twins. Moreover, we observe that DCS's plan to find suitable parents to adopt the children meets the criteria of [Indiana Code section 31-35-2-4\(b\)\(2\)\(D\)](#), *see now* [I.C. § 31-35-2-4\(c\)\(2\)](#). *See Lang v. Starke Cnty. Off. of Fam. & Child.*, 861 N.E.2d 366, 375 (Ind. Ct. App. 2007), *trans. denied*.

termination of Mother's parental rights was in the children's best interests. Tr. Vol. 2, pp. 231-32; Vol. 3, p. 18.

- [34] For all of these reasons, we conclude that DCS presented sufficient evidence that termination of Mother's parental rights was in the children's best interests.

Conclusion

- [35] Father and Mother have not established that the trial court's order terminating their parental rights to L.R., J.R., and K.R. is clearly erroneous. We therefore affirm the trial court's judgment.

- [36] Affirmed.

Altice, C.J., and Bailey, J., concur.

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