

# MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Termination  
of the Parent Child Relationship  
of:

C.K. and A.K. (Minor Children):

and

A.S.L. (Mother) and J.D.K.  
(Father),

*Appellants-Respondents,*

v.

March 18, 2022

Court of Appeals Case No.  
21A-JT-1994

Appeal from the Jefferson Circuit  
Court

The Honorable Donald J. Mote,  
Judge

Trial Court Cause Nos.  
39C01-2102-JT-5  
39C01-2102-JT-7

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

**Tavitas, Judge.**

## **Case Summary**

- [1] A.S.L. (“Mother”) and J.D.K. (“Father”) (collectively, “Parents”) appeal the termination of their parental rights to A.K. and C.K. (“the Children”). Parents challenge the sufficiency of the evidence to support the termination of their parental rights. Concluding that the Jefferson County Department of Child Services (“DCS”) presented sufficient evidence to support the termination of Parents’ parental rights, we affirm.

## **Issue**

- [2] Parents raise one issue, which we restate as whether sufficient evidence supports the termination of their parental rights to the Children.

## **Facts**

- [3] A.K. was born in June 2016 to Parents, and C.K. was born in July 2018. On August 1, 2019, DCS received a report that Parents’ apartment was unsuitable for children; Parents entered into a Safety Plan and cleaned the residence.
- [4] On September 4, 2019, DCS received a report that the Children were left unattended and that C.K. sustained a four-centimeter gash on his leg, which

required stitches. DCS discovered that the Children were “very dirty and had not eaten in a couple of days.” Tr. Vol. II p. 7. C.K. also had bronchitis, but Parents refused to obtain treatment. C.K. had “not had a well check or immunization since he was four months old.” *Id.* at 8. Three-year-old A.K. was nonverbal and also had not received a well check or immunizations. DCS substantiated neglect for “deplorable home conditions and medical neglect . . . .” *Id.* at 7.

[5] On September 26, 2019, DCS received another report, which alleged that Father was leaving the Children alone in the residence while Mother was working. Family Case Manager (“FCM”) Ashley Copeland arrived at the residence and observed Father riding his bicycle toward the residence. When FCM Copeland knocked on the door, Father was the only adult present with the Children. The conditions inside the residence were deplorable—the home was cluttered; knives were found within reach of the Children; flies covered the walls; dog feces were on the floor; a broken ceramic plate was on a child’s bed; dirty diapers, which contained maggots, were found “all over the bathroom floor”; the dogs were eating “baby feces on the floor”; dirty dishes cluttered the kitchen counters and the sink; electrical wires were readily accessible to the Children; and a hacksaw was found next to C.K.’s crib. *Id.* at 13.

[6] The overwhelming stench of dog feces and dog urine could be smelled from outside of the residence. Law enforcement officers searching the residence had to take turns entering the residence due to the smell. DCS removed the Children from the residence, and the Children were placed in foster care. As a

result of the incidents, Mother and Father were both charged with neglect of a dependent, a Level 5 felony, and neglect of a dependent, a Level 6 felony; both Parents pleaded guilty to neglect of a dependent, a Level 6 felony, and each Parent was sentenced to one year suspended to probation.

[7] On September 20, 2019, DCS filed a petition alleging that the Children were children in need of services (“CHINS”) under Indiana Code Section 31-34-1-1 and Indiana Code Section 31-34-1-2 due to Father’s failure to supervise the Children, C.K.’s injury, and the conditions of the residence. Parents admitted that the Children were CHINS, and the trial court ordered Parents to, among other things: (1) abstain from using illegal controlled substances; (2) complete a parenting assessment and successfully complete all recommendations; (3) submit to random drug screens; (4) attend all scheduled visitations; (5) meet their personal medical and mental health needs in a timely and complete manner; (6) maintain suitable, safe, and stable housing; and (7) secure and maintain a legal and stable source of income.

[8] DCS provided Parents with extensive services, but Parents made minimal progress. Despite the offered services, Mother was unable to maintain consistent employment; Parents were unable to maintain stable housing; Parents lacked transportation; Mother’s mental health issues persisted; Father continued to test positive for methamphetamine; and Parents’ participation in parenting classes and other services was inconsistent.

- [9] Father has been diagnosed with a “general anxiety disorder and mild intellectual disability.” Tr. Vol. II p. 64. Father was referred for individual therapy, family therapy, and life skills training. Father, however, only attended one therapy session. Father tested positive for methamphetamine every second or third week during the proceedings. Father, however, refused substance abuse services and individual therapy services. Father has not “exhibited any period of sobriety with the exception of the time he was in jail.” *Id.* at 112.
- [10] Mother has been diagnosed with bipolar disorder and post-traumatic stress disorder. Mother has been “depressed and emotional” and had “suicidal ideations.” *Id.* at 58. Mother was referred for individual and family therapy and psychiatric therapy for medication management. Mother attended seventy-three percent of her appointments but made little progress because of her failure to maintain her medications. The therapist was concerned with Mother’s ability to parent the Children because Mother is unable to maintain housing, employment, and financial stability due to her failure to take her medications. Mother’s therapist reported that Mother “definitely doesn’t have healthy boundaries for herself” and that Mother trusts people easily. *Id.* at 60.
- [11] A home-based caseworker met with Parents beginning in October 2019 and began working on Mother’s mental health, transportation, education, housing, and financial stability. Although Parents received approximately \$8,000.00 from Covid-19 stimulus funds and a tax return, Mother spent \$2,400.00 on a moped, which was insufficient to transport the Children. Although Mother

paid rent and other bills, according to Mother, Father used the remainder of the funds on drugs without Mother's knowledge.

[12] DCS provided twice weekly visits with the Children, but visitation was never increased beyond supervised visits. Although Parents initially attended the visitations on a consistent basis, their participation diminished in 2021, and Father's behavior was inappropriate. Father brought a pocketknife to a visit, argued with the visitation supervisor, and cursed at the supervisor. Father's last visit with the Children was in April 2021. Beginning in 2021, Mother repeatedly cancelled or did not appear for visits with the Children. Eventually Mother was required to call before visitations because the Children were distraught and, at some points, inconsolable due to Mother's failure to appear for visits.

[13] Father failed to report to probation or make any contact with the probation department, and on April 22, 2021, the State filed a notice of probation violation. Father was arrested and incarcerated until June 30, 2021. Father did not contact DCS after he was released from incarceration.

[14] Following Father's incarceration, Mother and Father ended their relationship, and Mother's participation in services decreased significantly. By May 2021, Mother still did not have consistent employment, a driver's license, or electricity in her apartment. At the time of the fact-finding hearing, Mother was at least two months behind on the rent, and Parents owed \$1,000.00 due to the

fire damage caused when Father passed out in the kitchen. Father was living with his sister.

[15] Shortly before the fact-finding hearing, Mother met a man in Ohio and became engaged within the span of a couple weeks. Mother reported to her therapist that the Children “call him ‘Dad,’” although the Children had never met the man. Tr. Vol. II p. 60. Also, during a supervised visit shortly before the fact-finding hearing, Mother introduced the Children to an eighteen-year-old woman who Mother claimed was “her adopted daughter,” which confused the Children. *Id.* at 33. DCS discovered that, despite Mother’s history of not caring for animals, Mother had acquired a dog and two cats.

[16] In February 2021, DCS filed a petition to terminate Parents’ parental rights. The trial court held a fact-finding hearing on July 9, 2021. On August 11, 2021, the trial court entered findings of fact and conclusions thereon terminating Mother’s and Father’s parental rights to the Children. Mother and Father now appeal.

## **Analysis**

[17] The Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Ind. Dep’t. of Child Servs., Dearborn Cnty. Off.*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054

(2000)). We recognize that parental interests are not absolute and must be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[18] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.<sup>1</sup> Here, the trial court entered findings of fact and conclusions thereon in granting DCS’s petition to terminate Mother’s and Father’s parental rights. We affirm a trial court’s termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court’s findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision.

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<sup>1</sup> Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

*Id.* We neither reweigh the evidence nor judge witness credibility, and we consider only the evidence and reasonable inferences that support the court’s judgment. *Id.*

[19] Indiana Code Section 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

### *A. Challenge to Findings*

[20] Parents argue that several of the trial court’s findings were not supported by the evidence. First, Parents challenge Finding No. 27, which provides: “While Parents attended these visits between June and November of 2020, attendance has slowed in recent months.” Appellants’ App. Vol. II p. 116. Parents contend that “[t]he undisputed record is that Parents consistently participated in visitation with the children from the time of removal until very shortly before the Fact-Finding hearing.” Appellants’ Br. p. 17. To the extent that the trial court’s finding implies that Parents only consistently attended visits between June and November of 2020, the finding is not supported by the evidence. The trial court’s other findings on Parents’ visitation with the Children, however, clarify that, after Father’s incarceration, Parents’ visitation with the Children was inconsistent and nonexistent in Father’s case. *See* Appellants’ App. Vol. II p. 116 (Findings 28, 29, 30). DCS presented evidence that Parents were consistent in visiting the Children until approximately April 2021. After Father’s incarceration, Mother’s visitation with the Children became inconsistent. Accordingly, to the extent Finding No. 27 is erroneous, it contains a minor error that does not impact the ultimate conclusions of the trial court and is harmless.

[21] Next, Parents challenge portions of Findings 59, 60, 63, and 96 that Parents squandered substantial financial resources. According to Parents, the funds were not spent “frivolously” because they spent the majority of the money on transportation, phone services, and past due bills. Appellants’ Br. p. 18. The

record, however, indicates that Mother purchased a moped that could not be used to transport the Children and that Father spent some of the money on drugs. Parents merely request that we reweigh the evidence, which we cannot do. The evidence is sufficient to support the findings.

[22] Parents next challenge Findings 59 and 63 regarding Mother's failure to maintain suitable employment. Parents argue that Mother diligently sought out employment and income to support the family. DCS presented evidence that Mother obtained and lost at least ten jobs during the pendency of the court proceedings and was unemployed for a substantial period of time. Again, Parents merely request that we reweigh the evidence, which we cannot do. The evidence is sufficient to support the findings.

[23] Parents also challenge Findings 35, 48, and 49 regarding Mother declining visitation and services to stay with a boyfriend in Ohio. Parents concede that Mother had a boyfriend in Ohio but argue it was speculation to conclude that Mother failed to participate in services and did not appear in person at the fact-finding hearing in order to stay with her boyfriend in Ohio. The evidence established that, after Father's incarceration, Mother began dating a man and became engaged to him within a few weeks. Mother also started spending significant amounts of time in Ohio and cancelled many appointments because she was in Ohio. Court Appointed Special Advocate ("CASA") Christy Stewart agreed that Mother had chosen "her boyfriend in Ohio over her children for the past several months." Tr. Vol. II p. 135. During the week of the fact-finding hearing, Mother missed all of her sessions with the home-based

caseworker because she was in Ohio, and Mother attended the fact-finding hearing by Zoom. We find the trial court could reasonably infer from the evidence that Mother missed services and the in-person fact-finding hearing to be with her boyfriend in Ohio. Parents merely request that we reweigh the evidence, which we cannot do. The evidence is sufficient to support the findings.

[24] Next, Parents challenge Finding 49, which provides:

Mother's ambivalence towards the pending termination of her parental rights appeared evident even in her behavior during the trial, which mother attended via Zoom from Ohio. During the hearing, the Court admonished Mother for smoking cigarettes. Mother appeared to have placed her camera on a couch cushion for much of the hearing. When Mother appeared again, she was outside with music blaring in the background, again smoking a cigarette.

Appellants' App. Vol. II p. 119. Parents contend that the record "contains no reference to Mother leaving her phone on a couch cushion or otherwise failing to participate in the hearing." Appellants' Br. p. 19. During the fact-finding hearing, the trial court suggested that Mother put out her cigarette; DCS made a record that Mother was smoking, had the camera off of her, was outside, and "doesn't seem to be present"; and the trial court directed Mother to turn her music off during her testimony. Tr. Vol. II pp. 53, 105, 141. Although the record does not reflect that Mother placed her phone on a couch cushion, the trial court was present at the hearing and was able to observe Mother's conduct. As such, we cannot say that the finding is clearly erroneous.

## ***B. Remedy of Conditions***

- [25] Parents argue that the trial court clearly erred in finding that there was a reasonable probability that the conditions that resulted in the Children’s removal or the reasons for placement outside the home of the parents will not be remedied.<sup>2</sup> “In determining whether ‘the conditions that resulted in the [the Children’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “First, we identify the conditions that led to removal; and second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” *Id.*
- [26] In the second step of this analysis, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

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<sup>2</sup> Mother and Father also argue that there was no reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Children. The trial court, however, did not find that the continuation of the parent-child relationship posed a threat to the well-being of the Children. Accordingly, we do not address the argument.

[27] The trial court found:

There is a reasonable probability that the conditions that resulted in the child's removal and the reasons for placement outside the home of the parents will not be remedied—namely, Parents' failure to secure and maintain stable and suitable housing or employment; Father's ongoing substance abuse issues, and Parents failure to participate in services or to make progress in services that have been provided to help them reunify with the Children[.]

Appellants' App. Vol. II p. 133.

[28] Parents contend that: (1) DCS failed to provide Father services while he was incarcerated and after his incarceration; (2) Father obtained substance abuse therapy while incarcerated; (3) Mother had an appointment for medication to treat her mental health condition; (4) Father was now being given all of his disability benefits; and (5) Mother had a stable apartment and a record of seeking employment. According to Parents, they "had improved their financial stability, living situation, substance abuse treatment, and mental health treatment since the children were removed." Appellants' Br. p. 22.

[29] The Children were initially removed from Parents' care due to a lack of supervision of the Children and deplorable home conditions. Although DCS offered Parents extensive services to address Mother's mental health, Father's substance abuse issues, and a lack of transportation, education, housing, and financial stability, Parents simply made little progress.

[30] Despite almost two years of services, Parents still lack stable housing, employment, and transportation. At the time of the fact-finding hearing, Father was living with his sister, and Mother was at least two months behind on the rent for her apartment. Father repeatedly tested positive for methamphetamine, but he declined to participate in substance abuse treatment or individual therapy except for weekly group therapy drug treatment services during his two-month incarceration. Mother did participate in individual therapy, but made little progress because she refused to take her medications. Mother's participation in any services and visitations declined significantly after Father's incarceration.

[31] CASA Stewart testified that she did not believe the conditions that resulted in the Children's removal would be remedied. According to CASA Stewart, Parents cannot understand and take responsibility for the reasons the Children were removed. Parents have claimed that the lack of supervision was "a freak accident or that the neighbors were lying when they reported it." Tr. Vol. II p. 313. Parents have failed to take advantage of the services offered to them. Mother's housing is still unstable, and Mother has again acquired pets despite earlier cleanliness issues due in part to pets. Parents are still struggling with the same issues that caused the Children's removal nearly twenty-two months ago.

[32] Parents' arguments to the contrary are merely a request that we reweigh the evidence, which we cannot do. Given the evidence presented, we cannot say the trial court's finding is clearly erroneous.

### *C. Best Interest*

- [33] Next, Parents challenge the trial court's finding that termination of their parental rights is in the Children's best interest. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep't of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018) (citing *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied.*), *trans. denied.* In doing so, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child's need for permanency is a "central consideration" in determining the best interest of a child. *Id.*
- [34] DCS presented evidence that the Children have flourished in foster care. Both Children were "severely developmentally delayed" when they arrived in foster care. Tr. Vol. II p. 133. Eighteen-month-old C.K. was nonverbal and could not stand on his own, but C.K. has progressed with therapies. Three-year-old A.K. was also nonverbal. A.K. has progressed, takes special education classes and speech therapies, and at the time of the fact-finding hearing, was about to start kindergarten. Although A.K. is "still very far behind and has a long way to go," he has made "great progress." *Id.* at 134. Mother's therapist and other service providers expressed concern about Parents' ability to care for the

Children. The CASA and the FCM opined that termination of Parents' parental rights was in the Children's best interest. Under these circumstances, the trial court's finding regarding the Children's best interest is not clearly erroneous.

## **Conclusion**

[35] Sufficient evidence supports the termination of Mother's and Father's parental rights to the Children. We affirm.

[36] Affirmed.

Bradford, C.J., and Crone, J., concur.