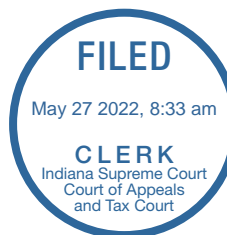


MEMORANDUM DECISION

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

Cynthia Phillips Smith
Law Office of Cynthia P. Smith
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Katherine A. Cornelius
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of:
W.D.T. (Minor Child)

and

J.T. (Father),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner.

May 27, 2022

Court of Appeals Case No.
21A-JT-2875

Appeal from the Tippecanoe
Superior Court

The Honorable Nancy L.
Gettinger, Senior Judge

Trial Court Cause No.
79D03-2108-JT-70

Mathias, Judge.

[1] J.T. (“Father”) appeals the Tippecanoe Superior Court’s order terminating his parental rights to his child, W.D.T. Father argues that the trial court’s order is not supported by clear and convincing evidence.

[2] We affirm.

Facts and Procedural History

[3] W.D.T. was born on March 20, 2020. In the summer months of 2020, the Department of Child Services (“DCS”) received multiple reports alleging that the infant child was being abused or neglected while in D.H.’s (“Mother”) care. On September 2, DCS filed a petition alleging that W.D.T. was a Child In Need of Services (“CHINS”). DCS alleged that W.D.T. was a CHINS because Father was in jail pending drug-related criminal charges, and Mother was an active drug user who had exposed the child to methamphetamine use.

[4] Father admitted that W.D.T. was a CHINS and the trial court adjudicated W.D.T. a CHINS as to Mother.¹ Mother does not participate in this appeal,² and, therefore, we focus on the facts related to Father’s ability to parent W.D.T.

[5] Father’s criminal history consists of several misdemeanor and Level 6 felony drug-related offenses and a felony fraud conviction. Father was incarcerated from

¹ W.D.T. was initially placed with paternal grandfather and remained in his care for several months. Paternal grandfather was not willing to adopt W.D.T. When DCS’s plan for W.D.T. changed to adoption, maternal grandmother asked that W.D.T. be placed in her care and expressed her desire to adopt him.

² The trial court terminated Mother’s parental rights in its November 29, 2021, order.

September 2020 to June 2021 in three different county jails. His family case manager was unable to provide services because the jails do not allow service providers to enter the facilities.

- [6] Ten days after he was released from incarceration, Father recognized that he needed additional help to maintain sobriety and he entered an in-patient treatment program at Meridian. He participated in one visitation with W.D.T. before he admitted himself to Meridian. Father refused to participate in additional visitations. Father also declined DCS offered services. Father informed DCS that he needed to focus on himself and his sobriety. Tr. p. 13.
- [7] He later transitioned to Home With Hope, a sober living program, where he was living on November 10, 2021, the date of the fact-finding hearing in this case. Father's residence at Home with Hope was not suitable for W.D.T. Father wants to remain at Home With Hope for two years as he works towards resolving his legal issues and maintaining sobriety. Father believes he needs to remain at Home With Hope to continue to be sober.
- [8] On August 18, 2021, DCS filed a petition requesting termination of Father's parental rights to W.D.T. The trial court held the fact-finding hearing on November 10, 2021. The Court Appointed Special Advocate ("CASA") testified that Father is employed and "working hard to stay sober." Tr. p. 42. When asked whether Father expected to reunify with W.D.T., the CASA testified:

It was my understanding that he wanted to terminate. He felt like he wasn't able to care for [W.D.T.], but I think his position has changed somewhat that he might want visits, he might want to

have contact with [W.D.T.] since he's the father. He said that he wasn't opposed to adoption but that he wanted maybe some involvement in [W.D.T.'s] life.

Id. Father expressed an interest in visits and services to the CASA for the first time at the fact-finding hearing. *Id.*

- [9] Father testified that he did not have a current ability to care for W.D.T. *Id.* at 61. Father admitted that he initially supported W.D.T.'s adoption but then stated that he had changed his mind. He testified, "I mean because if he is adopted that takes away my rights you know and he's still my son. Yes, I can't provide a house or anything else, but I guess my main fear is if he was adopted, I wouldn't have that right to see him" *Id.* at 62.
- [10] Father stated that he had over fourteen months of house arrest remaining as a result of his convictions in Jasper County and Carroll County. Father also testified that "everybody at the Home With Hope has said that if I ever needed help with DCS or anything visit wise that they would work stuff out with me. Also, my home detention case manager also said that she would help me out" *Id.* at 69.
- [11] The DCS service providers and the CASA supported W.D.T.'s adoption by maternal grandmother. Maternal grandmother is also W.D.T.'s half-sibling's guardian.
- [12] On November 29, 2021, the trial court issued its order terminating Father's parental rights and found:

- n. Father, by his own admission, has also struggled with substance abuse. He has been released from incarceration and is residing in a Sober Living house.
- o. Father anticipates he will live in this facility for two (2) more years as he is committed to resolving all of his legal issues, staying clean and sober, and being successful.
- p. Father admits that he has not been involved in Child's life, and that he has intentionally chosen to concentrate on his own recovery and sobriety.
- q. Father admits that he is currently not able to provide a home for Child as Father is unable to provide said home in the facility where he lives.
- r. Father's current sobriety and his efforts are laudable; however, he acknowledges that he needs the support of being in Sober Living to remain successful.
- s. Father does want his son to know who he is.
- t. The current pre-adoptive caregivers state that they will allow post-adoption contact.
- u. Father is aware that issue has to be addressed in the context of an adoption rather in the context of a termination of parental rights.

Appellant's App. p. 15.

[13] Father now appeals.

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; and 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*. Finally, in his Appellant’s Brief, Father does not challenge the trial court’s findings of fact as clearly erroneous; therefore, we will accept the unchallenged findings as true. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019).

Discussion and Decision

[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) (2021). Only two of those elements are at issue in this case: (1) whether there is a reasonable probability that the conditions that resulted in the child’s removal or the reasons for placement outside the home will not be remedied, and 2) whether termination of Father’s parental rights is in W.D.T.’s best interests.³ I.C. § 31-35-2-4(b)(2)(B)(i) & (C).

[17] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child’s very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). 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).

I. Clear and convincing evidence supports the trial court’s finding that the conditions that resulted in W.D.T.’s removal or reasons for placement outside Father’s home will not be remedied.

[18] First, we address Father’s argument that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in W.D.T.’s removal or reasons for placement outside of Father’s home will not be remedied. When we review whether there is a reasonable probability that the conditions that resulted in the child’s removal or reasons for placement

³ Father also challenges the trial court’s finding that continuation of the parent-child relationship poses a threat to W.D.T.’s well-being. Because DCS must only prove one of the elements listed in [Indiana Code subsection 31-35-2-4\(b\)\(2\)\(B\)](#), and we conclude that clear and convincing evidence supports the trial court’s conclusion that there is a reasonable probability that the conditions that resulted in W.D.T.’s removal will not be remedied, we do not address Father’s argument under the “threat” prong.

outside the parent’s home will not be remedied, our courts engage in a two-step analysis. See *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013). First, “we must ascertain what conditions led to [the child’s] placement and retention in foster care.” *Id.* Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child.” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. Habitual conduct may include “criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment,” but the services offered to the parent and the parent’s response to those services can also be evidence demonstrating that conditions will not be remedied. *A.D.S.*, 987 N.E.2d at 1157 (quoting *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind.Ct.App.2002)).

[19] When W.D.T. was removed from Mother’s care, he could not be placed in Father’s home because Father was incarcerated and unable to provide care and supervision for the child. Father was incarcerated for the first ten months of the CHINS proceedings. Father testified that he still had over fourteen months of house arrest to serve and he plans to reside at Home With Hope for two more years. Father admits that Home With Hope is not a suitable home for W.D.T. and that he does not have the current ability to care for the child.

[20] Father has been focused on maintaining his own sobriety since his release from jail. His efforts are commendable. Father is also gainfully employed. However,

Father has never had W.D.T. in his care, was unable to care for the child on the date of the fact-finding hearing, and he will be unable to care for the child while he resides at Home With Hope. Moreover, Father declined to participate in visitation with W.D.T. and refused to participate in services aimed at improving his ability to parent W.D.T. after his release from incarceration.⁴

[21] Father cites to *K.E. v. Indiana Department of Child Services*, 39 N.E.3d 641 (Ind. 2021) in support of his argument that incarceration is an insufficient basis for terminating parental rights. Appellant's Br. at 12. But the Father in *K.E.* participated in programs to better his life and his ability to parent his children. He also visited with his children every other week for two to three hours and made nightly phone calls to the children. Father was bonded with his children and made significant improvements toward being a better parent.

[22] In this case, Father has taken significant steps toward improving himself but he has not taken any steps to prepare to be a parent to W.D.T. He also refused visitation with W.D.T. and they have no relationship. By his own admission, Father cannot provide a suitable home for W.D.T. now or anytime in the foreseeable future. For these reasons, clear and convincing evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in the

⁴ In his brief, Father complains that DCS did not communicate with him and failed to offer him services. But DCS was unable to offer services while Father was incarcerated. After his release from incarceration, Father did not want to participate in visitation with W.D.T. and the CASA believed that Father intended to voluntarily terminate his parental rights. At the fact-finding hearing, Father admitted that he initially wanted W.D.T. to be adopted but that he had recently changed his mind. Tr. p. 62.

W.D.T.'s removal or the reasons for W.D.T.'s placement outside Father's home will not be remedied.

II. Clear and convincing evidence supports the trial court's finding that termination of Father's parental rights is in W.D.T.'s best interests.

[23] Next, we turn to Father's argument that DCS did not prove that termination of his parental rights was in the W.D.T.'s best interests. A court's consideration of whether termination of parental rights is in a child's best interests is "[p]erhaps the most difficult determination" a trial court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *In re A.D.S.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child's need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, "children cannot wait indefinitely for their parents to work toward preservation or reunification." *E.M.*, 4 N.E.3d at 648. "[W]e have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests." *A.D.S.*, 987 N.E.2d at 1158-59.

[24] In support of his challenge to the trial court's "best interest" finding, Father argues that the fact that he cannot provide a perfect home for W.D.T. is irrelevant under the best interest standard and he is not required to be a model parent. *See*

Appellant's Br. at 16. By his own admission, Father was unable to provide a home for W.D.T. and he also did not present any evidence that he has the ability care for W.D.T.

[25] Father refused visitation with W.D.T. and failed to participate in DCS services. Father had no relationship or bond with W.D.T. The first time Father requested visitation with W.D.T. was the date of the fact-finding hearing.

[26] Father wanted to remain at Home With Hope because he did not believe he could maintain his sobriety if he was not residing in a sober living environment. Father testified that "everyone" at Home With Hope would assist him with his DCS services and visitation with W.D.T., Tr. p. 69, but he had not taken advantage of the offer. DCS presented evidence that throughout the CHINS and termination proceedings, Father expressed little to no interest in parenting, or even establishing a relationship with, W.D.T. Finally, the DCS case managers and CASA supported the child's adoption by maternal grandmother.

[27] For all of these reasons, we conclude that clear and convincing evidence supports the trial court's finding that termination of Father's parental rights is in W.D.T.'s best interests.

Conclusion

[28] In sum, Father made significant improvements in his life after he was released from incarceration, but he did not put any effort into establishing a relationship with W.D.T. or improving his ability to parent W.D.T. Because DCS presented clear and convincing evidence to prove the enumerated factors listed in [Indiana](#)

Code section 31-35-2-4(b), we affirm the trial court's order terminating Father's parental rights to W.D.T.

[29] Affirmed.

Brown, J., and Molter, J., concur.