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.

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IN THE COURT OF APPEALS OF INDIANA

In the Involuntary Termination of the Parent-Child Relationship of:

E.R and R.R. (Minor Children),

and

M.B. (Mother) and E.R. (Father),

Appellants-Respondents,

v.

January 14, 2022

Court of Appeals Case No. 21A-JT-1602

Appeal from the Grant Superior Court

The Honorable Dana J. Kenworthy, Judge

Trial Court Cause No. 27D02-2101-JT-11 27D02-2101-JT-12

Indiana Department of Child Services,
Appellee-Petitioner.

Tavitas, Judge.

Case Summary

[1] M.B. ("Mother") and Er.R. ("Father") appeal the termination of their parental rights to E.R. and R.R. ("the Children"). Mother and Father challenge the sufficiency of the evidence to support the termination of their parental rights. Concluding that the Grant County Department of Child Services ("DCS") presented sufficient evidence to support the termination of Mother's and Father's parental rights, we affirm.

Issue

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

Facts

[3] E.R. was born in July 2007, and R.R. was born in May 2009 to Mother and Father. One of Father's legs has been amputated, and his other leg has arthritis and "circulation problems." Tr. Vol. II p. 138. According to Father, he cannot

use a wheelchair, and Father does not leave his home. In 2013, Mother and Father removed the Children from school and started online schooling.

[4] In February 2018, DCS received a report alleging that the Children were the victims of educational neglect as they had not recently been to school or logged into their online school. Family Case Manager ("FCM") Jonathan Hart went to the home and knocked on the door, but no one answered. FCM Hart also tried calling Father, but Father did not answer. Father did email FCM Hart later, but Father refused to allow FCM Hart to see the Children.

[5] FCM Hart then obtained an order to compel the parents' cooperation and returned to the home on March 2, 2018. Again, no one answered the door, and FCM Hart sought the assistance of law enforcement, who obtained a search warrant. When the police arrived with the search warrant and knocked on the door, Mother and the Children came outside. Mother and Father, however, remained uncooperative with DCS.

[6] FCM Hart found that the Children were "extremely dirty" and had a "very strong odor." *Id.* at 14. The Children's odor was so "overwhelming" that DCS staff had to take turns supervising the Children because "people were starting to feel ill." *Id.* E.R., who was ten years old at this time, could not count and did not know her colors. Both E.R. and R.R. were significantly delayed in their education. DCS removed the Children from Mother's and Father's care.

[7] DCS filed a petition alleging that the Children were children in need of services ("CHINS").[1] DCS alleged that: (1) the Children were CHINS pursuant to Indiana Code Section 31-34-1-1 because E.R.'s and R.R.'s physical or mental conditions were seriously impaired or endangered as a result of Mother's and Father's inability, refusal, or neglect to supply the Children with the necessary food, clothing, shelter, medical care, education, or supervision[2]; and (2) E.R. was a CHINS pursuant to Indiana Code Section 31-34-1-6 because she substantially endangers her own health or the health of another.[3] On December 20, 2018, the trial court adjudicated the Children as CHINS based upon Mother's and Father's admissions.

[8] The trial court then entered a dispositional order and required Mother and Father, in part, to: (1) complete parenting assessments and successfully complete all resulting recommendations; (2) complete psychological evaluations and successfully complete all resulting recommendations; (3) attend all scheduled visitations; (4) participate in home-based case management and

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[1] Petitions were filed on March 5, 2018, August 30, 2018, and October 25, 2018.

[2] The petition alleged that:

> [T]he children's educational, social, emotional, medical, and developmental needs have been severely neglected. The children initially were unable to recite the alphabet, write, read, identify colors, or count. [E.R.] was determined to be obese, severely cognitively delayed, and lacking any social skills or understanding. [R.R.] was determined to be delayed and lacking social skills or understanding.

Ex. p. 11.

[3] The petition alleged that E.R. was "so cognitively deficient and delayed that she presents a danger to herself and others because she is unable to understand dangers that her environment may present, and because her social interaction skill[s] are so lacking that she does not understand how her actions may be injurious to others." Ex. pp. 11-12.

counseling and follow all resulting recommendations; and (5) complete clinical interviews and follow all resulting recommendations. Father was also ordered to sign all necessary releases and "make reasonable efforts to attend all assessments and/or evaluations and/or services that cannot be conducted in the home." Ex. p. 27.

[9] Mother completed a psychiatric evaluation and a clinical interview, but Father refused to do so. Both Mother and Father completed a parenting assessment. Mother's initial compliance with services was "excellent," but Father refused to leave his home due to the amputation of his leg. Tr. Vol. II p. 93. Although FCM Darlene Milton arranged to have Father transported to services and provided Father with a wheelchair, Father refused. Mother and Father initially participated in home-based case management services; however, the services were later closed because of cancelled appointments.

[10] From November 2019 through June 2020, therapist Sally Archer-Jones supervised therapeutic visits between Mother, Father, and the Children. Therapist Archer-Jones supervised thirteen in-person visits with Mother. Father did not attend any in-person visits but did participate in visits by telephone. Mother and Father moved to the Chicago area in approximately February 2020. Therapist Archer-Jones then supervised fifteen virtual visits with Mother, Father, and the Children due to the Covid pandemic. Father dominated the virtual visits, and the Children had "an immediate and quick regression" with respect to their behaviors, which concerned Therapist Archer-Jones. *Id.* at 30. Father conversed mainly with R.R. during the visits and

would only interact with E.R. when R.R. left the room. *Id.* at 33. Therapist Archer-Jones did not observe a "genuine connection" between Father and the Children, but the visits between Mother and the Children went well. *Id.* at 27.

[11] In June 2020, Therapist Archer-Jones notified Mother and Father that the visits would resume to in-person. Mother and Father, however, did not participate in further visits. At some point, Mother told Therapist Archer-Jones that she was considering leaving Father because he was taking her money and was verbally abusive. Mother, however, did not leave Father.

[12] In November 2020, therapeutic supervised visits resumed with Therapist Mariah Bruner. Therapist Bruner started with telephone visits between Mother, Father, and the Children. The first visit was not productive because the Children were fighting, so Therapist Bruner suggested separate telephone visits with each child. The visits eventually moved to virtual visits. Therapist Bruner was concerned with Father's "lack of responsibility and ownership" for the "harm that's been done to the children and how it has impacted them." *Id.* at 59.

[13] Upon their removal from Mother and Father, the Children were placed in foster care. Hygiene was "a very big problem" for the Children. *Id.* at 75. They did not know how to bathe themselves, and R.R. was scared of the water. The Children's developmental and social skills were lacking. The Children would crawl like animals in stores, run into the streets, and quickly eat as much as possible. When Court Appointed Special Advocate ("CASA") Nancy Stevens

first met the Children, they had "no boundaries," could not "speak well," and could not read well. *Id.* at 132. Both Children have also struggled with inappropriate touching behaviors. This behavior escalated after visits with Mother and Father resumed.

[14] E.R. was placed at Damar Services, Inc.[4] for one month in July 2018 for erratic behavior and inappropriate touching. E.R. has been diagnosed with "mental[ ] retardation"; lacks boundaries; and is participating in life-skill schooling. *Id.* at 104. E.R. has progressed with hygiene, getting dressed, and interacting with others, but E.R. still misses some social cues and has a developmental delay. *Id.* at 35. R.R. has been participating in behavioral therapy, individual therapy, special education classes, and wrap-around services. R.R.'s behaviors have improved significantly in foster care. He continued to work with a therapist, occupational therapist, physical therapist, and speech therapist.

[15] In January 2021, DCS filed a petition to terminate Mother's and Father's parental rights to the Children. A fact-finding hearing was held in March 2021, and the trial court entered findings of fact and conclusions thereon granting DCS's petition in June 2021. Mother and Father now appeal.

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[4] Damar Services, Inc., provides services, including residential care, to children with autism and other developmental, behavioral, and intellectual disabilities. *See* https://www.damar.org/ (last accessed Jan. 4, 2022).

Analysis

[16] 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.

[17] 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.[5] Here, the

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[5] 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.

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. *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.*

[18] 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.

(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

(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).

[19] Mother and Father 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.[6] "In determining whether 'the conditions that resulted in the [the Children's] removal . . . will not be remedied,' we 'engage in a two-step

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[6] 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. Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, the DCS was required to demonstrate by clear and convincing evidence of a reasonable probability that *either*: (1) the conditions that resulted in the Children's removal or the reasons for placement outside the home of the parents will not be remedied, *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the Children. *See, e.g., Bester v. Lake Cnty Off. of Fam. & Child.,* 839 N.E.2d 143, 148 n.5 (Ind. 2005). The trial court here found a reasonable probability that the conditions that resulted in the Children's removal or reasons for placement outside the home of the parents will not be remedied, and there is sufficient evidence to support that conclusion. Accordingly, we do not address whether the continuation of the parent-child relationship poses a threat to the well-being of the Children.

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.*

[20] 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*, 839 N.E.2d at 152). "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*.

[21] Mother and Father claim that the trial court "failed to give adequate weight to mother's positive participation, progress, and strong bond with the children . . . ." Appellant's Br. p. 17. Mother and Father argue that the conditions that led to the Children's removal have been remedied because the Children are now enrolled in school and no evidence exists to suggest "that educational progress would not continue if the children were in Mother's care." *Id.* at 19. Father, however, conceded at the fact-finding hearing that he was unable to care for the Children by himself.

[22] The Children were removed from Mother's and Father's care due to educational neglect and poor hygiene. Additionally, Mother and Father were

uncooperative when DCS investigated the reasons why the Children failed to attend school. The Children had not physically attended school in five years, and they were not regularly participating in their online schooling. Both Children were significantly delayed in their education and were filthy. Although the Children were removed from the care of Mother and Father in March 2018, Mother and Father made little progress toward completing services before the fact-finding hearing on DCS's petition to terminate their parental rights in March 2021. The trial court correctly noted that: "Parents have failed to complete any court-ordered services necessary for reunification with the children. Parents did not demonstrate sustained progress in the limited services in which they did participate for a period of time." Appellant's App. pp. 90-91.

[23] The Children have special needs and basic needs that Mother and Father have neglected. FCM Milton testified that she was concerned Mother and Father would be unable to address the Children's disabilities and maintain the progress the Children have made. FCM Milton noted that Father "just disregards [E.R.] altogether and always goes with [R.R.]." *Id.* at 109. CASA Stevens testified that she was concerned about Mother's and Father's ability to provide an education to the Children and continue the progress the Children have made.

[24] The trial court addressed the fact that Mother made more progress than Father in participating in services and found:

> Mother initially participated well in services, but did not sustain any progress and did not demonstrate an ability to understand or

> meet her children's special needs. The Court does not doubt that Mother loves the children and has a bond with them. The Court observes Mother to have limited intellectual functioning and understanding. The Court has observed Father's dominance and control over Mother, and suspects that Mother suffers from the same control and isolation at home as the children did as a result of Father's dominance. But she has been given many opportunities for assistance in reunifying with the children—even independently, and has not availed herself of those opportunities. She is either unwilling or unable to do what she needs to do to reunify with the children.

Appellant's App. Vol. II p. 93.

[25] Mother and Father were given years of opportunities to demonstrate that they are capable of providing the Children with the special care that the Children require. Mother and Father, however, have made little to no progress. Under these circumstances, we cannot say the trial court clearly erred in finding 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.

Conclusion

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

[27] Affirmed.

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