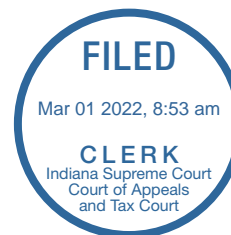


MEMORANDUM DECISION

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 re the Termination of the
Parent-Child Relationship of:

L.G. (*Minor Child*),

and

L.P.N. (*Father*),

Appellant-Respondent,

v.

Indiana Department of Child
Services,

Appellee-Petitioner,

March 1, 2022

Court of Appeals Case No.
21A-JT-1918

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause No.
72D01-2001-JT-2

Robb, Judge.

Case Summary and Issue

- [1] L.P.N. (“Father”) appeals the juvenile court’s termination of his parental rights to L.N. (“Child”) and raises the following restated issue: whether the juvenile court’s judgment terminating his parental rights was clearly erroneous. Concluding the evidence supports the findings and the findings support the judgment terminating Father’s parental rights, we affirm.

Facts and Procedural History

- [2] In June 2018, when Child was three years old, the Indiana Department of Child Services (“DCS”) investigated a report that Father was unable to care for Child or provide her food or shelter because of his methamphetamine use.¹ Based on its investigation, DCS filed a petition alleging Child was a child in need of services (“CHINS”) and removed her from Father’s care. Child was adjudicated a CHINS in October upon the juvenile court finding Father had no driver’s license, employment, or housing of his own and had made no progress in addressing his ongoing issues with substance abuse. A dispositional order was entered in December and a parental participation plan was put in place.

¹ At this same time, DCS investigated a report that Child’s mother, J.J., could not care for Child due to incarceration and substance use. The juvenile court also terminated J.J.’s parental rights in this proceeding, but she does not participate in this appeal. We have therefore limited our recitation of the facts to those pertinent to Father except where necessary to do otherwise.

Father had referrals for substance abuse treatment with Centerstone and fatherhood engagement with Family Time.

[3] At a March 2019 review hearing, the juvenile court found that Father had partially complied with the case plan, attending seven of twelve scheduled appointments with his Centerstone recovery coach and meeting once a week with his Family Time fatherhood engagement specialist. However, he had missed three scheduled visitations due to lack of transportation, continued to live with his parents and lack employment, and had tested positive for methamphetamine twice.

[4] After the March review hearing, Father participated in services sporadically. Between March and May, Father met with his fatherhood engagement specialist weekly, met with his recovery coach once, but never met with his individual therapist. He failed to attend three out of five scheduled visits with Child and when he did attend, he was distracted and had difficulty staying engaged with her. He tested positive for methamphetamine once and stopped communicating with DCS. In May, Father was arrested for possession of methamphetamine and paraphernalia and incarcerated. He did participate in visitation with Child once in June and once in July but failed or was unable to participate in other services. The July 2019 visit was the last visit between Father and Child.

[5] In December 2019, the juvenile court approved a permanency plan of adoption upon finding that Father had not been compliant with the case plan because he

had been incarcerated. In January 2020, the court ordered that visitation and all DCS-provided services be suspended. No services have been provided since that time.

[6] Also in January, DCS filed a petition for involuntary termination of Father's parental rights. A fact-finding hearing set for March 3, 2020, was continued at the mother's request, and, in part due to COVID-19-related delays and in part due to other requests for continuances, the hearing was not held until July 13, 2021. At that time, Child had been removed from Father for three years. Father testified that during those three years, he had been incarcerated multiple times for possession of methamphetamine and had *not* been incarcerated for approximately twelve of those thirty-six months. Most recently, he had been released into a six-month Salvation Army residential rehabilitation program and had approximately forty days remaining in the program. While in the program, Father was participating in daily classes, including anger management and grief counseling; work therapy; and regularly attended Narcotics Anonymous meetings. He hoped to stay at the Salvation Army following completion of the program to participate in its "temporary living status" program which would allow him to live rent-free for a period of time while he obtained employment and saved money. Transcript of Evidence, Volume II at 61. He felt that after completing the program, he would be able to parent Child appropriately because he is "not the same person [he] was." *Id.* at 61-62.

[7] DCS witnesses testified to their involvement with Father during the CHINS case. A DCS liaison for Centerstone testified that Father had his first

involvement with Centerstone providers on January 4, 2019, and his last on April 30, 2019. He was discharged from Centerstone in September 2019 because he had not returned for recommended services due to his incarceration. DCS Family Case Manager (“FCM”) Kassandra Poellot was assigned to the case in April 2021, but in the few months she had the case, she spoke with Father no more than two times and only by phone. Based on her review of the case, she noted that Father did participate, but somewhat inconsistently, in some services prior to his incarceration in May 2019 and had last visited with Child in July 2019. Once Father was incarcerated, however, DCS put services on hold and eventually the juvenile court suspended them. The FCM did not think it likely that Father would ever be able to provide a safe and stable environment for Child and, upon considering Father’s lack of compliance with services before they were suspended, including inconsistent visitation, and how well Child is doing in her current foster placement, she also believed it was in Child’s best interest to be adopted after being out of Father’s care for three years. Lena Reynolds, Child’s court appointed special advocate (“CASA”) since November 2019, also believed termination and adoption was in Child’s best interest because “it would be traumatic for her” to be removed at this point from the foster placement and “she would not recover from moving.” *Id.* at 47.²

² Although not clearly explained at the hearing, it appears from the records of the CHINS case that Child’s foster placement was changed several times during the CHINS case until September 2020 when she was placed with the current foster family, which intends to adopt her if able.

[8] Immediately following the hearing, the juvenile court ruled from the bench that the reasons for Child's removal have not been remedied and termination was in her best interests:

[Father] has been in and out of jail, and although I commend you . . . for being in treatment now, and we all hope that when you come out . . . you do lead a very different life and one free of being in the criminal system and definitely free of drugs and alcohol, we all wish that for you, but I am going to need to find still that . . . the reasons for the removal have not been remedied and by the testimony I've heard today are also not likely to be remedied. . . . [Father], you haven't seen [Child] in over two years and she's very bonded where she's at[.] So I'm going to find also that neither parent . . . are able to provide a safe and stable environment for [Child], have not been able to do that the last three years, as she's been removed from them for half of her life and just not been in a situation that mom and dad are doing well enough for her to ever go back and be reunited with them. . . . [S]o for all those reasons above, I'm going to find that the termination of the parent-child relationship again, is in the best interest of the child.

Id. at 72-73 (cleaned up). The juvenile court subsequently entered a written order terminating Father's parental rights and making the following relevant findings:

Facts [Relating to Termination Elements]

* * *

2. Father has been incarcerated on and off during the time the CHINS case was pending, and did not comply with services when he was not incarcerated. Further, Father has an extensive criminal history related to substance abuse.

3. Father has not visited the child in two years. . . . Given that amount of time and the behavioral issues that the child has displayed, reintroducing the parents is likely to pose a threat to the child's well-being.

4. The child has been out of the home for half of her life and has bonded with her current foster family.

5. Neither parent can provide a safe and stable environment for the child at this time, three years after she was removed, and neither have demonstrated the ability to progress toward the same.

6. Both CASA Lena Reynolds and FCM Kassandra Poellot believe that it is in the best interest of [Child] to be adopted by the current foster family.

7. DCS' plan for Child is that she be adopted, this plan is satisfactory for Child's care and treatment and an adoptive family has been identified.

8. The Child's CASA/GAL is supportive of the plan of termination of parental rights and believes it is in the Child's best interests to be adopted.

9. DCS believes it is in the best interests of the Child to be adopted by the current foster family.

* * *

13. When determining the likelihood that circumstances that led to removal will be remedied, the court may consider habitual conduct and weight it against current circumstances. Father's history of criminal conduct and incarceration, as well as

substance abuse, which led to the removal of the child, is sufficient to demonstrate that the reason for removal will not be remedied. . . .

14. . . . Each paragraph [above], independently and cumulatively, demonstrates this Court’s finding that there is a reasonable probability that the conditions that resulted in the Child’s removal from the home of the biological . . . Father will not be remedied, or that continuation of the parent-child relationship poses a threat to the well-being of the Child.

15. Each paragraph above also demonstrates the Court’s finding that termination of the parent-child relationship is in the best interests of the Child[.]

Appealed Order at 4-5 (citation omitted). Father now appeals.

Discussion and Decision

I. Standard of Review

[9] The Fourteenth Amendment to the United States Constitution protects the right of parents to establish a home and raise their children. *In re Adoption of O.R.*, 16 N.E.3d 965, 972 (Ind. 2014). We acknowledge that the parent-child relationship is “one of the most valued relationships in our culture[,]” but we also recognize that “parental interests are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights.” *In re I.A.*, 934 N.E.3d 1127, 1132 (Ind. 2010). Therefore, 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). The involuntary termination of parental rights is the most extreme sanction a court can impose because termination severs all rights of a parent to their children, and as such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *In re R.A.*, 19 N.E.3d 313, 321 (Ind. Ct. App. 2014), *trans. denied*. The purpose of terminating parental rights is to protect children, not to punish parents. *In re C.D.*, 141 N.E.3d 845, 852 (Ind. Ct. App. 2020), *trans. denied*.

[10] Indiana Code section 31-35-2-4(b)(2) sets out the elements that DCS must allege and prove to terminate a parent-child relationship,³ 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.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

³ DCS must prove four elements in total, but Father concedes DCS has proven the other two elements, that Child has been removed for at least six months under a dispositional decree and that there is a satisfactory plan for Child's care and treatment. *See* Appellant's Brief at 11-12; *see also* Ind. Code § 31-35-2-4(b)(2)(A), (D).

[and]

(C) that termination is in the best interests of the child[.]

DCS must prove each element by clear and convincing evidence. Ind. Code § 31-37-14-2.

[11] If the juvenile court finds 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). In doing so, the juvenile court must enter findings supporting the court’s conclusions. 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*. To determine whether findings or a judgment are clearly erroneous, we consider whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *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. Sufficiency of the Evidence

A. Findings

[12] Father argues that the following findings by the juvenile court are not supported by the record:

- Father has been incarcerated on and off during the time the CHINS case was pending *and did not comply with services when he was not incarcerated.* (Finding #2);
- Father has an *extensive criminal history* related to substance abuse. (Finding #2); and
- Father *has not demonstrated the ability to progress* toward providing a safe and stable environment for Child. (Finding #5).⁴

See Appellant's Br. at 12-14.

[13] With respect to the juvenile court's finding that Father did not comply with services when he was not incarcerated, Father is correct that DCS only offered services from the time the dispositional decree was entered in December 2018 until he was incarcerated in May 2019. And the record does show that he did participate in some services during that time. However, the record also shows that he was not fully compliant. He missed several appointments with his recovery coach, missed several scheduled visits with Child and was not fully engaged during the visits he attended, did not obtain independent housing or employment, tested positive for methamphetamine at least two times, and was arrested for possession of methamphetamine. Thus, the record supports the

⁴ Father also contends Finding #3, that reintroducing the parents into Child's life is likely to pose a threat to her well-being, is not supported by the record. However, this is a conclusion from the facts rather than a finding of fact itself.

juvenile court's finding that during the time Father was not incarcerated, he was not compliant with services.

[14] As for the finding that Father has an extensive criminal history related to substance abuse, the testimony at the termination hearing focused on Father's May 2019 arrest and subsequent incarceration as that marked a shift in Father's participation in services and ultimately led to their suspension. However, the record as a whole shows that in the three years the CHINS case was pending, Father was convicted three times of possession of methamphetamine and violated his probation once. *See* Tr., Vol. II at 66 (Father testifying of his convictions that "the most recent one" was for possession of methamphetamine, "the one before that started out as dealing methamphetamine" but was dropped to possession, and "prior to that," he had another possession case); *see also* Index of Exhibits at 99-111 (Chronological Case Summaries of July 2019 and September 2020 cases for drug charges, including a probation revocation in the July 2019 case). As Father notes, the term "extensive" is subjective, *see* Appellant's Br. at 13, but the record supports the juvenile court's assessment that three convictions for possession of methamphetamine in less than three years while a CHINS case is pending is an extensive criminal history.

[15] Finally, Father challenges the juvenile court's finding that Father had not demonstrated the ability to progress toward providing a safe and stable environment for Child. Father notes that he was not provided any services by DCS while he was incarcerated but since his release, he entered drug treatment

“[o]n his own,” has made “substantial progress” with his substance abuse issues, and has a plan for providing for Child in the future. *Id.* at 14. First, it does not appear that Father entered drug treatment entirely of his own volition, as records from his criminal cases show that as part of his sentence in his 2020 case and resolution of his probation violation in his July 2019 case, he was “granted furlough to participate in Ft Wayne Salvation Army Rehab program” and was to return to custody if he did not complete the program. Index of Exhibits at 102, 111. Second, although we hope as the juvenile court does that Father will successfully complete the program and make positive changes in his life once he is no longer in a residential program, it cannot be known until he is living independently if he has made substantial progress in overcoming his substance abuse issues, and that milestone does not appear to be imminent. And third, although Father has a plan, it is tentative at best, as he testified he is “thinking about staying up here [after the program] and then . . . getting my own place and stuff like that. Getting a job.” Tr., Vol. II at 60. Only after completing the program – which is still at least forty days away, finding a job, and participating in an aftercare program that would allow him to save money before transitioning to living on his own would he feel able to parent Child. *See id.* at 60-61. In other words, Father had only recently begun to take encouraging steps but had not yet demonstrated concrete progress toward a stable life for himself, let alone Child. The record supports this finding.

[16] As the evidence supports the challenged findings, we conclude the findings are not clearly erroneous.

B. Remedy of Conditions

- [17] Father also contends the findings do not support the juvenile court's conclusion that it is unlikely the reasons for Child's removal will be remedied or its ultimate judgment terminating Father's parental rights. For purposes of reviewing the juvenile court's judgment, the challenged findings are all supported by evidence in the record, and the unchallenged findings are taken as true. *S.S.*, 120 N.E.3d 605, 610 (Ind. Ct. App. 2019).
- [18] In determining whether the evidence supports the juvenile court's conclusion that Father was unlikely to remedy the reasons for Child's removal, we engage in a two-step analysis: "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." *In re E.M.*, 4 N.E.3d at 643 (quotations and citations omitted).
- [19] In the second step, a parent's fitness to care for his child must be judged at the time of the termination hearing, taking into consideration evidence of changed conditions. *Matter of K.T.*, 137 N.E.3d 317, 326 (Ind. Ct. App. 2019). The parent's habitual patterns of conduct must also be evaluated to determine the probability of future neglect or deprivation of the child. *Id.* "The [juvenile] court is entrusted with balancing a parent's recent improvements against habitual patterns of conduct." *In re J.S.*, 133 N.E.3d at 715. In doing so, it may consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and

employment. *In re W.M.L.*, 82 N.E.3d 361, 367 (Ind. Ct. App. 2017). But such a determination “must be founded on factually-based occurrences as documented in the record—not simply speculative or *possible* future harms.” *In re V.A.*, 51 N.E.3d 1140, 1146 (Ind. 2016). DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent’s behavior will not change. *In re Ma.J.*, 972 N.E.2d 394, 401 (Ind. Ct. App. 2012).

[20] The conditions that led to Child’s removal were Father’s methamphetamine use causing neglect and lack of food and shelter. During the CHINS proceedings, Father failed several drug tests and was convicted three times of possession of methamphetamine, demonstrating persistent use of the drug. At the time of the termination hearing, Father had been out of jail and in a residential rehabilitation program for five months but had yet to show that he could stay clean of his own accord. Also at the time of the hearing, Father had no job and no independent housing. Because he was not allowed to have a job while participating in the program, it would be at least another month after the hearing before he would complete the program and could obtain employment, and then he planned to remain in a temporary aftercare program for an unknown amount of time while he worked and saved money before transitioning to living on his own. In other words, Father had yet to show a lasting change in his habitual pattern of methamphetamine use and his inability to provide food, shelter, and a suitable environment for Child at the time of her removal continued at the time of the termination hearing.

[21] Father points out that DCS stopped providing services when he was incarcerated in May 2019 and contends that he “made every effort to obtain services available to him while incarcerated.” Appellant’s Br. at 16. The record does not support this assertion, however. Father testified that he is attending anger management and grief counseling classes as part of his rehabilitation program, but there is no evidence that he participated in any independent services from May 2019 until he was released to the rehabilitation program in February of 2021. It is also unclear whether those classes are a required part of his program or an elective, so to speak, and there is no indication that Father is participating in any classes or services designed to enhance his parenting or independent living skills. We commend Father’s efforts at rehabilitation and hope for his sake that he continues on the path to recovery. But five months of supervised progress out of the three years since Child was removed does not reliably demonstrate that his behavior will change. The juvenile court did not clearly err when it concluded there is a reasonable probability that the conditions that resulted in Child’s removal will not be remedied.⁵

C. Best Interests of Child

[22] Finally, Father alleges the findings do not support the juvenile court’s decision that termination is in the best interests of Child. In determining what is in the

⁵ Because we have determined that DCS met its burden to show that the conditions that resulted in Child’s removal will not be remedied pursuant to Indiana Code section 31-35-2-4(b)(2)(B)(i), and because section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not address whether DCS has also proven that continuation of the parent-child relationship is a threat to Child’s well-being under section 31-35-2-4(b)(2)(B)(ii). See *In re A.K.*, 924 N.E.2d 212, 220-21 (Ind. Ct. App. 2010).

best interests of the child, the juvenile court is required to look beyond the factors identified by DCS to the totality of the evidence. *A.D.S. v. Ind. Dep't of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013), *trans. denied*. The court must subordinate the interests of the parent to those of the child and need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *Id.* The recommendation of both the FCM and CASA 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. *Id.* at 1158-59.

[23] Here, FCM Poellot and CASA Reynolds both supported termination of Father's parental rights and adoption by Child's current foster parents. And we have determined there is a reasonable probability that the conditions that resulted in Child's removal from Father's care will not be remedied. In addition, Father and Child have not seen one another for two years. Although the testimony is not entirely clear, Child suffers from a history of trauma that has precipitated violent outbursts and temper tantrums, behavioral issues that not every foster placement has been able to handle. Child was moved several times during these proceedings until her current caregivers were able to start working through her behavioral issues and bonding with her. The CASA testified that she believed removing Child from her foster parents at this point "would be a devastation to her [and] she would not recover[.]" Tr., Vol. II at 47. Considering the totality of the circumstances, the juvenile court's

conclusion that termination of Father's parental rights was in Child's best interests is not clearly erroneous.

Conclusion

[24] The evidence clearly and convincingly supports the juvenile court's challenged findings and the findings clearly and convincingly support the court's conclusions that the conditions that resulted in Child's removal from Father's care will not likely be remedied and that termination is in Child's best interests. Accordingly, we affirm the judgment terminating Father's parental rights.

[25] Affirmed.

Riley, J., and Molter, J., concur.