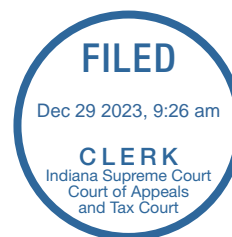


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

In re: the Termination of the
Parent-Child Relationship of:
B.R. (Minor Child),
Child in Need of Services

and

C.S. (Father),
Appellant-Respondent,

v.

Indiana Department of Child
Services,
Appellee-Petitioner

December 29, 2023

Court of Appeals Case No.
23A-JT-1755

Appeal from the Scott Superior
Court

The Honorable Marsha Owens
Howser, Judge

Trial Court Cause No.
72D01-2301-JT-5

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

- [1] C.S. (“Father”) appeals the involuntary termination of his parental rights to B.R. (“Child”). Father argues the trial court erroneously concluded termination of his parental rights was in Child’s best interests. We affirm.

Facts and Procedural History

- [2] Father is the biological father of Child, born to A.R. (“Mother”) on March 8, 2020. R.R. is Child’s legal father, as he was married to Mother at the time of Child’s birth.¹ Child lived with Mother and R.R. prior to the events in this appeal. At the time that Child lived in the residence, there were twenty people living there, including seven children.
- [3] On April 8, 2020, the Department of Child Services (“DCS”) investigated allegations of domestic violence and drug use involving Mother and R.R. DCS entered into an informal adjustment with Mother and R.R., but the services offered as part of the informal adjustment did not remedy the situation. On September 2, 2020, DCS, as well as two deputies from the Scott County Sheriff’s Department, investigated a report that “a member of the household

¹ Mother signed a consent for Child to be adopted, and R.R. voluntarily terminated his parental rights to Child. Mother and R.R. do not participate in this appeal. We will therefore focus our recitation of the facts and analysis on Father.

was using illegal substances, that there were bed bug bites on a child in the home, and that there were inappropriate home conditions.” (Ex. Vol. I at 27.) Upon their arrival, the DCS investigator and the Sheriff’s deputies observed roaches and bedbugs. While the DCS investigator and the Sheriff’s deputies were on site, one of the home’s occupants arrived, “parked his car sideways and state[ed], ‘I blocked you guys from leaving, and no one is leaving and taking my grandkids.’” (*Id.* at 27.) Another occupant indicated she would “come up there [to the DCS office] and kill you all.” (*Id.* at 28.) At some point, the DCS investigator and the Sheriff’s deputies left the residence. In the subsequent DCS report, the DCS investigator noted several domestic violence calls from the residence and one of the children had, in the past, thrown “a kitten into a fire.” (*Id.* at 28.) They returned on September 9, 2020, and removed Child² from the care of Mother and R.R. Child was placed in foster care, where he has remained during the pendency of these proceedings.

[4] On September 11, 2020, DCS filed a petition alleging Child was a Child in Need of Services (“CHINS”) based on domestic violence in the home, the condition of the home, and illegal drug use by one of the home’s occupants. At the time, the parties believed R.R. was Child’s father because R.R. and Mother were married. The trial court held an initial hearing the same day, and Mother and R.R. denied the CHINS allegations. The trial court held a fact-finding

² Child’s two siblings were also removed and placed in foster care with Child. They are not subjects of this appeal, and Father is not the biological father of either of Child’s siblings.

hearing on the CHINS petition on April 1, 2021. The same day, the trial court entered its order adjudicating Child as a CHINS. On May 13, 2021, the trial court held a dispositional hearing and, on July 14, 2021, ordered Mother and R.R. to participate in certain services.³

[5] In April or May 2022, Mother told the DCS Family Case Manager (“FCM”) that Father was Child’s biological father. The FCM contacted Father and he told the FCM he believed he was Child’s biological Father but was not sure. The FCM asked Father to take a DNA test to confirm Father’s paternity of Child, and he refused.

[6] On July 29, 2022, DCS filed an amended CHINS petition to include Father in the proceedings. On October 25, 2022, the trial court held a fact-finding hearing as to the amended CHINS petition. Father did not attend. On October 27, 2022, the trial court entered its order adjudicating Child as a CHINS as to Father. It also ordered Father to submit a DNA sample. On November 10, 2022, after a review hearing in the CHINS case, the trial court changed Child’s permanency plan from reunification to adoption based on lack of compliance with services by Mother and R.R.

[7] On December 13, 2022, the trial court held a dispositional hearing regarding Father. Father did not attend. Also on December 13, 2022, FCM Sydney Burrage discovered Father had been arrested and was in the Clark County Jail.

³ The ordered services are not relevant here, as Mother and R.R. do not participate in this appeal.

FCM Burrage visited Father in jail and asked him to take a DNA test. Father told FCM Burrage he did not want to take the DNA test because “it was going to interfere with [his] relationship with [another child and that child’s mother] and [his] home that I was living at the time . . . it was going to jeopardize everything [he] had going for [him].” (Tr. Vol. II at 54.) FCM Burrage showed Father a picture of Child and Father indicated “that he did not want his rights terminated” if he was Child’s father. (*Id.* at 26.)

[8] On December 21, 2022, the trial court entered its dispositional order requiring Father to, among other things, contact the FCM on a regular basis; enroll in and attend programs suggested by FCM; maintain suitable housing; secure and maintain a legal source of income; seek to establish legal paternity of Child; refrain from using and/or selling illegal substances; obey the law; complete a parenting assessment, a substance abuse assessment, and a psychological assessment and follow all recommendations; submit to random drug screens; refrain from committing domestic violence; and visit with Child.

[9] On January 19, 2023, DCS filed a petition to terminate the parental rights of Mother, R.R., and Father based on their noncompliance with services. DCS attempted to serve Father with notice of the petition at his last known address and through publication, but he did not respond. DCS eventually ascertained that Father remained incarcerated in the Clark County Jail and served him there.

[10] On April 4, 2023, the trial court held the first part of the fact-finding hearing, which was continued due to illness of the DCS attorney. Father did not attend. On the same day, the trial court received confirmation that Father was Child’s biological Father.

[11] On June 27, 2023, the trial court held its second fact-finding hearing. Sometime prior to that hearing, Mother signed a consent to allow Child’s foster parents to adopt him. FCM Burrage testified she believed that Father’s incarceration in Clark County stemmed from a charge involving methamphetamine and that Father had “a warrant in Jackson County for auto theft, and then there are warrants in Scott County for possession of methamphetamine, maintaining a common nuisance, um, driving while suspended, and possession of paraphernalia.” (*Id.* at 28.)

[12] FCM Burrage testified Father never met Child, though Father testified he saw Child shortly after Child was born. Father acknowledged at the termination fact-finding hearing that he did not ask for or participate in services, even when he was not incarcerated.⁴ He testified he did not engage in services because he “was going to lose [his] home and [his] involvement with [girlfriend and their child].” (*Id.* at 51.) During the fact-finding hearing, Father admitted he did not think it was fair for Child to “wait even longer to have permanency when he’s already been in the DCS system for over three years[.]” (*Id.* at 59.) FCM

⁴ The period(s) of time during which Father was not incarcerated during the CHINS and termination cases are unclear from the record.

Burrage and Court Appointed Special Advocate (“CASA”) Allison Snyder both testified they believed termination of Father’s parental rights was in Child’s best interests based on Father’s inability to provide for Child’s needs and Father’s lack of involvement with Child. On June 30, 2023, the trial court issued its order terminating Father’s parental rights to Child.

Discussion and Decision

[13] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the juvenile 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. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied* 534 U.S. 1161 (2002).

[14] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, *id.*, but parental

rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[15] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (A) that one (1) of the following is true:
 - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
 - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
 - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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.

Ind. Code § 31-35-2-4(b)(2). DCS must provide clear and convincing proof of these allegations at the termination hearing. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

[16] Father argues the termination of his parental rights to Child is not in Child’s best interests. In determining what is in a child’s best interests, a trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re A.K.*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010), *trans. dismissed*. A parent’s historical inability to provide a suitable environment, along with the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the children. *In re A.L.H.*, 774 N.E.2d 896, 990 (Ind. Ct. App. 2002). The recommendations of a DCS case manager and court-appointed advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in a child’s best interests. *In re J.S.*, 906 N.E.2d at 236.

[17] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the

evidence supports the findings and 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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992). Father does not challenge any of the trial court’s findings. Instead he argues the trial court’s findings do not support its conclusion that termination of Father’s parental rights is in Child’s best interests.

[18] The trial court made several findings relevant to Child’s best interests:

25. [Father] has never cared for, supported or protected Child at all throughout Child’s life.

26. Despite knowing before [Child’s] birth that he may be the father, [Father] did not complete a DNA test until April 2023 despite a Court order and numerous requests from DCS.

27. [Father] repeatedly chose to put himself over Child.

28. [Father] admitted he did not want to step up for Child as it would have jeopardized his life with another woman.

29. [Father] has never put Child first and Child does not deserve such treatment.

30. [Father] is not a protective father for Child.

31. [Father] repeatedly evaded DCS contact despite DCS'[s] extensive efforts through investigative referrals, mailings, publication and other attempts to contact [Father].

32. [Father] never willingly contact[ed] DCS to inform them of his whereabouts, or to inquire about [Child] throughout the entirety of the underlying CHINS case.

33. When DCS was able to make contact with [Father], he refused to submit to DNA tests and stated he did not want any involvement in the case or in Child's life.

34. [Father] cannot provide financially, emotionally or otherwise for Child.

35. [Father] has repeatedly failed to obey the law throughout the life of the CHINS case.

36. [Father] has been incarcerated for a portion of the CHINS case for charges including but not limited to, Possession of Methamphetamine. These charges were obtained during the CHINS case.

37. At the time of the final termination hearing, [Father] also had four (4) pending warrants for additional criminal charges relating to illegal substances under cause numbers 36C01-2205-F6-000232, 72C01-2111-F6-000490, 36C01-2111-F6-000526, [and] 72C01-2106-F6-000246.

38. [Father] does not have any definitive date for release from incarceration at the time of the final hearing.

39. [Father] testified he did not believe it is fair to [Child] to have to wait for him based on the mere possibility he would be able to

achieve and maintain stability after the completion of his current sentence and the unknown sentences he may receive on his other pending criminal cases.

40. There is no indication that [Father] would participate in services or in the Child's life even if he were to be released from incarceration as [Father] has had the opportunity to be involved in Child's life and has repeatedly chosen not to.

41. Although [Father] has been incarcerated for a portion of the CHINS case, he has not been incarcerated for the entire CHINS case and has had ample time to engage in services and make efforts to obtain and maintain a safe and stable environment for Child. However, he has been unable to do so.

42. [Father] could have had additional time to engage in services during the CHINS case but chose to engage in criminal activity instead of services that would aid him in reunifying with Child.

43. Further, [Father's] limited time to engage in services is entirely attributed to the choices [Father] made in continuously dodging DCS efforts to DNA test him and get him involved in the case, as well as his complete failure to engage with [Child] at all during the three (3) years of Child's life.

44. Child has never met [Father] and has no bond with him.

* * * * *

46. As of June 27, 2023, Child was placed in foster care with [H.W. and C.W.] where Child remains at this time.

47. Prior to official placement in their home, [H.W. and C.W.] provided respite care for Child and have already begun to

establish a significant bond with him. [H.W. and C.W.] have expressed their desire to proceed with adoption of Child.

48. Child is thriving in this placement and the placement has the means and desire to proceed with the adoption of [Child].

* * * * *

56. Child's CASA testified that termination of the parent-child relationship is in [Child's] best interest[s] as [Father] has not been able to achieve or maintain safety or stability for [Child] and has not and will not be a provider, caretaker, or support for [Child].

57. Child's CASA testified that it is in Child's best interests to be Adopted and that Adoption is a satisfactory plan as [Child] is placed in a pre-adoptive placement with his siblings where all his needs are being met.

58. The Court finds CASA's testimony to be reliable and trustworthy and adopts CASA's testimony as findings of this Court.

59. Child has been out of the care and custody of any parent for nearly his entire life, and testimony demonstrated the Child is well adjusted and making significant improvements in his current foster home. It is in [Child's] best interest[s] to pursue Adoption.

(App. Vol. II at 106-8.)

[19] Father argues the trial court ignored his testimony that he had never harmed or neglected Child, that he wanted to be involved in Child's life, that he had a stable place to live upon release from incarceration, and that he "was on track

to resolve his legal issues within a short period of time[.]” (Br. of Appellant at 14.) He states, “there was no evidence that a short delay would have any negative impact on Child.” (*Id.* at 15.) However, as the trial court found, Father has never met Child, did not take a DNA test to confirm his paternity of Child until three years after Child was born, did not participate in any services even when he was not incarcerated, and admitted Child should not have to wait for permanency. Based on Father’s complete noncompliance with services and total inability to care for Child, we conclude termination of Father’s parental rights to Child was in Child’s best interests. *See Matter of G.M.*, 71 N.E.3d 898, 909 (Ind. Ct. App. 2017) (termination in the child’s best interests because the mother had not progressed in services and continued to be unable to care for the child).

Conclusion

[20] Termination of Father’s parental rights to Child was in Child’s best interests. We accordingly affirm the trial court’s decision.

[21] Affirmed.

Bailey, J., and Felix, J., concur.