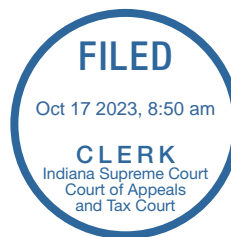


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANTS

Dorothy Ferguson
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

David E. Corey
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Termination of the Parent-Child Relationship of: Ka.A. and Ko.A. (Minor Children)

B.A. (Mother) and B.A. (Father),
Appellants-Respondents,

v.

Indiana Department of
Child Services,
Appellees-Petitioners

October 17, 2023

Court of Appeals Case No.
23A-JT-151

Appeal from the Madison Circuit
Court

The Honorable Angela Warner
Sims, Special Judge

Trial Court Cause Nos.
48C02-2203-JT-29
48C02-2203-JT-30

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

- [1] Bl.A. (Mother) and Br.A. (Father) appeal the trial court's termination of their parental rights as to Ka.A. and Ko.A. (collectively, Children). Children were adjudicated children in need of services (CHINS) due to illicit drug use and drug-related neglect by Mother and Father (collectively, Parents). Parents were later charged with and convicted of multiple drug-related felonies while the CHINS case was pending, and over the next three years, they varyingly were incarcerated, using illicit drugs, or failing to submit to court-ordered drug screens. In terminating Parents' parental rights as to Children, the trial court concluded that the conditions resulting in Children's removal were unlikely to be remedied and that termination was in their best interests. We find clear and convincing evidence to support the trial court's judgment and, therefore, affirm.

Facts

- [2] Father has lived with addiction since he was 11 years old. His drug of choice is methamphetamine, but he has also used alcohol, marijuana, and pain killers at various points in his life. Father's criminal history includes a 2003 conviction for Class B felony dealing in methamphetamine, for which he was sentenced to 12 years in the Indiana Department of Correction (DOC). It also includes two 2012 convictions for Class D felony possession of a controlled substance and Class A misdemeanor possession of marijuana, for which Father was sentenced to a total of 3 years in the DOC.

- [3] Father married Mother in 2017, and Ka.A. and Ko.A. were born in 2017 and 2018, respectively. The Indiana Department of Child Services (DCS) became involved with the family because Ko.A. was born with methamphetamine and marijuana in his system. Parents both admitted to using marijuana, and Mother separately admitted to using marijuana laced with methamphetamine. DCS also smelled marijuana in Childrens' bedroom while assessing Parents' home.
- [4] As a result of Parents' drug use and drug-related neglect of Children, DCS filed a petition alleging Children were CHINS. Children were adjudicated as such in November 2018, and a dispositional hearing was held the following month. After the hearing, the trial court entered a dispositional order requiring, among other things, that Parents obey the law, participate in counseling, abstain from using illicit drugs, and submit to random drug screens.
- [5] The trial court initially ordered an in-home placement for Children. But in February 2019, the court modified Children's placement to foster care after both Parents were charged with possession of methamphetamine, unlawful possession of a syringe, maintaining a common nuisance, and two counts of neglect of a dependent—all Level 6 felonies. A few months later, Father was charged in a separate case with Level 6 felony possession of methamphetamine and Level 6 felony maintaining a common nuisance. And a few months after that, Mother was charged in a separate case with Level 6 felony possession of a narcotic drug, Level 6 felony unlawful possession of a syringe, and Class A misdemeanor possession of a controlled substance.

- [6] Mother pleaded guilty as charged in her two criminal cases and was sentenced to a total of 4 years in the DOC, with 3 years executed and 1 year suspended to probation. Mother participated in various services while in prison and, upon her release, began Suboxone¹ treatment and addiction counseling. Mother, however, failed to report for random drug testing as requested by DCS. From October 18, 2021, through April 7, 2022, Mother missed 25 drug screens. She then tested positive for methamphetamine and fentanyl on April 13, 2022.
- [7] Father also pleaded guilty as charged in his two criminal cases and was sentenced to a total of 5 years in the DOC, with 2½ years served on work release, ½ year served in community corrections, and 2 years suspended to probation. Father, however, violated the terms of his work release in January 2020 and was ordered to serve that 2½-year portion of his sentence in the DOC. Then, in October 2021, Father violated the terms of his probation and was ordered to serve that 2-year portion of his sentence on work release.
- [8] Like Mother, Father participated in various services while incarcerated and, upon his release, began Suboxone treatment and addiction counseling. Also like Mother, Father failed to report for random drug testing as requested by DCS. After testing positive for methamphetamine on June 4, 2021, Father missed 53 drugs screens between June 17, 2021, and April 25, 2022.

¹ “Suboxone . . . is used to treat opioid addiction. It suppresses withdrawal symptoms and cravings for opioids, which can help prevent relapse.” *In re Adoption of S.P.*, 172 N.E.3d 344, 349 n.5 (Ind. Ct. App. 2021) (internal quotation omitted).

- [9] In March 2022, DCS petitioned to terminate Parents' parental rights as to Children. During the three-day termination hearing that summer, Mother testified that she had relapsed, was using heroin daily, and had last used heroin the day before her testimony. Father testified that he had been sober since April 2021 and had been submitting to weekly drug screens through his addiction counseling program since that time. Father presented a spreadsheet of the results from these weekly drug screens, showing that he only tested positive for Tetrahydrocannabinol (THC) and Suboxone between May 2021 and May 2022. According to Father's addiction counselor, participants in the counseling program self-conduct their drug screens at home, without supervision.
- [10] The Children's DCS Family Case Manager (FCM) and Court Appointed Special Advocate (CASA) also testified at the termination hearing. Both stated that Children had been in the same, stable foster care placement for the last 2½ years and had grown to know their foster parents as "mom and dad." Tr. Vol. I, pp. 187-88; *see* Tr. Vol. II, pp. 40-41. The FCM and CASA therefore recommended termination as being in Children's best interests.
- [11] After the termination hearing, the trial court issued a written order in which it made 68 findings of fact. Based on these findings, the court concluded there was a reasonable probability that the conditions resulting in Children's removal would not be remedied, that continuation of the parent-child relationships posed a threat to Children's well-being, and that terminating Parents' parental rights was in Children's best interest. The court therefore terminated Parent's parental rights.

Discussion and Decision

[12] In a joint appeal, Parents argue that DCS presented insufficient evidence to support the allegations in its termination petition. A petition to terminate parental rights must allege, in relevant 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.

Ind. Code § 31-35-2-4(b)(2). If the trial court finds the allegations in a termination petition are true by clear and convincing evidence, the court shall terminate the parent-child relationship. Ind. Code §§ 31-35-2-8, -37-14-2.

I. Standard of Review

[13] When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). First, we determine whether

the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* We will set aside the trial court’s judgment only if it is clearly erroneous. *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019). A judgment is clearly erroneous if the trial court’s findings of fact do not support its conclusions of law or if the court’s legal conclusions do not support its ultimate decision to terminate parental rights. *Id.*

II. Findings of Fact

[14] Parents challenge Findings No. 16, 21, 31, 57, 58, 59, 60, 61, 64, and 66 on appeal. But even if these 10 challenged findings are clearly erroneous, reversal is not warranted if the 58 unchallenged findings still support the trial court’s judgment. *A.F. v. Marion Cnty. Off. of Fam. & Child.*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002); *see generally Matter of De.B.*, 144 N.E.3d 763, 772 (Ind. Ct. App. 2020) (“Any unchallenged findings stand as proven.”). Accordingly, we may limit our review to whether the unchallenged findings are sufficient to support the trial court’s conclusions.

II. Conclusions of Law

A. Remediating Conditions

[15] Parents challenge the trial court’s conclusions that the conditions resulting in Children’s removal were unlikely to be remedied and that Parents’ continued relationship with Children posed a threat to their well-being. Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, only one of these conclusions was necessary to terminate Parents’ parental rights. *In re S.K.*, 124

N.E.3d 1225, 1233 (Ind. Ct. App. 2019). We find the remedying conditions issue dispositive.

- [16] Children were adjudicated CHINS because of Parents' illicit drug use and drug-related neglect. In evaluating the likelihood that conditions would not be remedied, the trial court was obligated to consider Parents' fitness at the time of the termination hearing, taking into account evidence of changed conditions. *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015). "Changed conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect." *Id.*

Mother's Drug Use

- [17] The trial court's unchallenged findings support its conclusion that Mother's illicit drug use is unlikely to be remedied. Finding No. 7 reveals that Mother failed to "[a]bstain from use of illegal drugs." App. Vol. II, p. 25. Findings Nos. 35 and 36 show that, while Children's CHINS case was pending, Mother was charged with and pleaded guilty to one count each of possession of methamphetamine, possession of a controlled substance, possession of a narcotic drug, and maintaining a common nuisance, as well as two counts of unlawful possession of a syringe. Moreover, Finding No. 11 establishes that, at the time of the termination hearing, Mother was using heroin daily and had last used heroin only one day before. Based on these unchallenged findings, the trial court's remedying conditions conclusion is not clearly erroneous as to Mother.

Father's Drug Use

- [18] Additional unchallenged findings support the same conclusion as to Father. Findings No. 37 and 38 reveal that Father was convicted of dealing in methamphetamine, possession of a controlled substance, and possession of marijuana prior to Children's births. And Findings No. 39 and 40 show that, while Children's CHINS case was pending, Father was convicted of two counts of possession of methamphetamine, two counts of maintaining a common nuisance, and one count of unlawful possession of a syringe. Moreover, Finding No. 15 establishes that Father failed to "submit to random drug screens." *Id.*
- [19] In challenging the trial court's remedying conditions conclusion, Father overlooks his drug history and simply contends that he was "fit at the time of the [termination] hearing to provide care for his children with the exception that he was in work release." Appellant's Br., p. 14. We recognize that Father began participating in addiction counseling after his release from prison, but he missed 53 random drugs screens during that time. "A parent whose drug use led to a child's removal cannot be permitted to refuse to submit to drug testing, then later claim the DCS has failed to prove that the drug use has continued." *In re A.B.*, 924 N.E.2d 666, 671 (Ind. Ct. App. 2010); *Matter of C.C.*, 153 N.E.3d 340, 349 (Ind. Ct. App. 2020) ("A parent who screens positive for illegal substances and is ordered to submit to drug screens, may not refuse to submit to drug screens and expect to maintain his parental rights.")

[20] Based on its unchallenged findings, the trial court’s remedying conditions conclusion is not clearly erroneous as to Father.

B. Best Interests

[21] Parents also challenge the trial court’s conclusion that terminating their parental rights was in Children’s best interest. In determining the best interests of a child, “trial courts must look at the totality of the evidence and, in doing so, subordinate the parents’ interests to those of the children.” *Matter of Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019). “Central among these interests is children’s need for permanency.” *Id.* “[C]hildren cannot wait indefinitely for their parents to work toward preservation or reunification.” *In re E.M.*, 4 N.E.3d 636, 648 (Ind. 2014).

[22] At the termination hearing, Children’s FCM and CASA both testified that terminating Parents’ parental rights was in Children’s best interest. Parents claim this testimony is insufficient because it was not corroborated by testimony from Children’s service providers. But where the conditions resulting in a child’s removal are unlikely to be remedied, the dual recommendation of a FCM and a CASA to terminate parental rights is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158-59 (Ind. Ct. App. 2013). Thus, the totality of the evidence supports the trial court’s best interests’ conclusion.

[23] We affirm the trial court’s judgment.

Riley, J., and Bradford, J., concur.