

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In re the Termination of the  
Parent-Child Relationship of  
T.R. (Minor Child)

And

B.R. (Father),  
*Appellant-Respondent*,

v.

Indiana Department of Child  
Services,

April 29, 2021

Court of Appeals Case No.  
20A-JT-1870

Appeal from the Allen Superior  
Court

The Honorable Charles F. Pratt,  
Judge

The Honorable Sherry A. Hartzler,  
Magistrate

Trial Court Cause No.  
02D08-1909-JT-380

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*Appellee-Petitioner.*

**Altice, Judge.**

### **Case Summary**

[1] B.R. (Father) appeals from the involuntary termination of his parental rights to T.R. (Child). Father presents two issues for our review:

1. Did the trial court abuse its discretion when it denied his request to appoint a Guardian ad Litem (GAL)?
2. Is the court's order terminating Father's parental rights supported by sufficient evidence?

[2] We affirm.

### **Facts & Procedural History**

[3] Father and C.C. (Mother) are the biological parents of M.R., born on May 14, 2014, and Child, born on October 14, 2017.<sup>1</sup> Child was immediately removed

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<sup>1</sup> Mother also has a third child, J.D., with another man.

from Mother's care at birth due to Child's drug exposure during delivery, Mother's and Father's drug use, housing instability, and domestic violence between Mother and Father.<sup>2</sup> On October 16, 2017, the Allen County Department of Child Services (DCS) filed a child in need of services (CHINS) petition for Child.

[4] After a factfinding hearing, at which Father did not appear, Child was adjudicated a CHINS on February 12, 2018. On March 7, 2018, the juvenile court entered a dispositional order in which Father was ordered to participate in reunification services. Specifically, Father was to refrain from criminal activity, maintain clean, safe, and sustainable housing, cooperate with caseworkers, attend all case conferences, maintain contact with DCS, submit to diagnostic testing, obtain a drug and alcohol assessment and follow all recommendations, obtain and maintain suitable employment, engage in home-based services, submit to random drug screens, and participate in visits with Child.

[5] Shortly after Child's birth, Father submitted to drug screens that were positive for substances such as THC, cocaine, opiates, morphine, and fentanyl. Approximately three weeks after Child's birth, Father left Indiana, telling DCS he needed to leave the State to get medical treatment for his teeth. Father did

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<sup>2</sup> On June 8, 2015, M.R. and J.D. were removed from Mother's care after J.D. was noted to have a "hand shaped bruise on his buttocks" and Father admitted that he had spanked J.D. *Appellant's Appendix Vol. II* at 192. In addition to physical abuse or inappropriate discipline, there were also concerns about drug use by both Mother and Father, unstable housing, and reports of domestic violence. M.R. and J.D. were adjudicated CHINS and placed in foster care where they have remained.

not maintain contact with DCS and in March 2019, the court noted in a permanency order that Father could not be located. At a permanency hearing on September 16, 2019, the court found Father in “total non-compliance” with the dispositional order and changed the permanency plan from reunification to termination of parental rights and adoption. *Exhibits Vol. 1* at 134. On September 23, 2019, DCS filed a petition to terminate Father’s parental rights to Child (TPR Petition).

[6] Father finally contacted DCS on January 21, 2020. Father is now living in California. The court held a factfinding hearing on the TPR Petition on February 27, March 5, March 12, and June 30, 2020.

[7] For the February 27 hearing, Father appeared telephonically from California. At the start of the hearing, the court advised Father of his rights. When the court inquired if Father suffered from mental illness, Father answered in the negative but then informed the court that he was “in outpatient treatment for PTSD and traumatic brain injury due to . . . decompressions in Iraq.” *Transcript Vol. 2* at 15. Notwithstanding, Father told the court that he understood the nature of the proceedings. Father’s counsel then asked the court to appoint a GAL for Father’s benefit, stating he had concerns with Father’s “current mental state and his . . . faculties.” *Id.* Before addressing counsel’s GAL request, the court continued with its advisement of rights. The court found that Father understood his rights and the nature of the proceedings and thus, denied the request for appointment of a GAL. The hearing continued with DCS calling Father as its first witness.

[8] During his testimony, Father stated that he was not employed but that he was “100 percent service connected through the VA for traumatic brain injury.” *Id.* at 23. Father provided his address in California and admitted that he had not seen Child since she was three weeks old. DCS then questioned Father about the reasons for Child’s removal, including questions about alleged physical abuse of J.D. and domestic violence. Father asked his counsel to help him answer the questions as Father found them to be “very incriminating” and “unacceptable.” *Id.* at 28. After the court provided Father an opportunity to speak with his counsel off the record, Father’s counsel reasserted his request for appointment of a GAL because counsel had “difficulty understanding” Father and his “basic sentence structure and things like that.” *Id.* at 30. Father’s counsel believed a GAL could help assist Father with understanding DCS’s case and answer his questions. The court determined that Father “didn’t like the questions” being asked about prior abuse allegations but he eventually answered them. *Id.* at 31. The court further determined that a GAL would not provide anything different than the service Father’s counsel was providing. The court adjourned for the day, stating that it would “certainly consider it again” but also directing Father and his counsel to discuss the situation before the next scheduled hearing. *Id.* at 32.

[9] On March 5, 2020, the factfinding hearing recommenced.<sup>3</sup> Father again raised the issue of having a GAL and indicated that he was trying to obtain legal counsel in California so he could “have somebody with me throughout this proceeding.” *Id.* at 43. The court reiterated its prior denial of appointing a GAL. DCS presented testimony from a DCS investigator and the family case manager (FCM). They both testified as to Father’s failure to participate in services and his lack of communication with DCS for over two years. The FCM noted that Father had not seen or communicated with Child and that he had not provided any type of support, financial or otherwise, since Child was three weeks old. Father had also not sought help after being diagnosed with major depressive disorder, opioid use disorder, PTSD with disassociation, and cannabis use disorder. Given that Father had taken no steps to improve his situation or address DCS’s concerns about mental health, substance abuse, and physical abuse and that Child did not know Father and had no relationship with him, the FCM testified that adoption of Child by her foster family was in Child’s best interests. The hearing was adjourned for the day.

[10] Father appeared telephonically for the continuation of the hearing on March 12, 2020, but because his counsel was ill, the hearing was continued to March 16, 2020. Father, however, could not be reached on March 16, 2020. The hearing proceeded with DCS presenting the testimony of Child’s GAL. Noting the history of the case, Father’s total non-compliance with services, and the fact

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<sup>3</sup> At this hearing, Mother submitted her consent to adoption of Child.

that Father has not visited Child since she was three weeks old, Child's GAL opined that termination of Father's parental rights was in Child's best interests. While the GAL empathized with Father because he had "significant issues that relate to . . . his service in the military," the Child's GAL believed the Child needed permanency. *Id.* at 85. DCS rested its case. Because Father could not be reached, a final hearing was set for June 30, 2020, so Father could present his evidence. Father, however, could not be reached by telephone for the June 30 hearing. After confirming on the record that Father did have notice of the hearing, Father's counsel rested his case.

[11] On September 4, 2020, the juvenile court issued its order terminating Father's parental rights. The court made the following unchallenged findings:

21. Over the course of the [CHINS] proceeding, [Father] did not participate in or complete his court ordered services. The Court finds through the testimony of the [DCS] case manager, that [Father] completed a diagnostic assessment in 2015, but never followed the recommendations that included a psychological evaluation and other mental health services. The Court further finds that [Father] did not complete his drug and alcohol assessment or complete his home-based services.

22. Prior to leaving the State of Indiana in approximately October or November of 2017, [Father] had submitted to drug screens, for which he continued to test positive for illegal substances. After leaving the State of Indiana, he has not submitted to drug screens for [DCS].

23. The Court finds as well that [Father] suffers from mental illness, including diagnoses for major depression, opioid use

disorder, and post-traumatic stress disorder with dissociation. These diagnoses were made prior to [Father] leaving the State of Indiana, and services were put in place and available to him to meet his needs. Nevertheless, [Father] left the State and ceased all contact with [DCS] until shortly before the termination proceedings.

24. The Court certainly empathizes with [Father], given that he was significantly injured while serving this country, and is suffering from mental illness and substance abuse. However, he left the State of Indiana; failed to maintain contact with [DCS]; did not participate in services to assist in the reunification of his child to his care; and did not maintain any relationship with Child.

*Appellant's Appendix Vol. II* at 194. The court found that DCS had met its burden for termination of Father's parental rights. Father now appeals. Additional facts will be provided, as necessary.

## **Discussion & Decision**

### ***1. Appointment of GAL***

[12] Father argues that the trial court abused its discretion in refusing to grant his request for a GAL. Father asserts that he suffers from a mental illness that rendered him unable to understand the termination proceedings.

[13] Because termination proceedings are civil in nature, they are governed by the Indiana Rules of Trial Procedure. *See D.T. v. Ind. Dep't of Child Servs.*, 981 N.E.2d 1221, 1225 (Ind. Ct. App. 2013). Ind. Trial Rule 17(C) states, in relevant part, that a trial court "shall" appoint a GAL for an incompetent



person who is not adequately represented. Although T.R. 17 uses the word “shall,” we have determined that “the rule does not make the appointment of a guardian ad litem mandatory, but rather, the power to appoint is discretionary with the court, depending on whether the court perceives that the interests of the . . . incompetent are adequately represented and protected.” *Brewer v. Brewer*, 403 N.E.2d 352, 354 (Ind. Ct. App. 1980). In other words, a trial court has discretion as to whether to appoint a GAL.

[14] Here, there was no evidence that Father was incompetent. Father does not assert, and there is nothing in the record showing that Father was ever declared incompetent. To the contrary, the record demonstrates that Father lived on his own, took care of his own needs, and traveled to California on his own. Further, in his responses to the court’s questions, Father demonstrated that he understood the nature and obligation of his oath to tell the truth, the burden of proof and required elements in termination hearings, and the consequences of termination of his parental rights. As the trial court noted, Father’s questions and seeming confusion stemmed from the fact that Father did not like the questions posed about the past abuse allegations against him. The court also determined that Father’s interests were being adequately represented by his attorney and thus, appointment of a GAL for Father was not necessary. We agree with the court’s assessment and therefore conclude that the court did not abuse its discretion in denying Father’s request for GAL.

[15] Father also argues that the court’s refusal to appoint a GAL violated his due process rights. The Due Process Clause of the United States Constitution

“prohibits state action that deprives a person of life, liberty, or property without a fair proceeding.” *D.T.*, 981 N.E.2d at 1226. In termination of parental rights proceedings, the State must terminate a parent-child relationship in a manner that meets the requirements of due process. *C.T. v. Marion Cty. Dep’t of Child Servs.*, 896 N.E.2d 571, 586 (Ind. Ct. App. 2008), *trans. denied*. Due process in the context of termination proceedings requires a balancing of three factors: (1) the private interests affected by the proceeding, (2) the risk of error created by the State’s chosen procedure, and (3) the countervailing governmental interest supporting use of the challenged procedure. *Id.* (citing *In re C.C.*, 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), *trans. denied*).

[16] It is well established that the private interests of Father are substantial in that the action involves the termination of his parental rights to Child. The State’s countervailing interest in protecting the welfare of children is also substantial. Our focus is thus on the risk of error. Here, Father left the State of Indiana three weeks after Child’s birth and did not keep DCS informed as to his whereabouts. Nearly two years later, DCS requested termination of Father’s parental rights. Father did not appear in the termination proceedings for another four months.

[17] As noted above, there is no evidence that Father was incompetent, and his interests throughout the termination proceedings were adequately represented by private counsel. We also note that Father appeared telephonically for the first two days of the factfinding hearing. On the first day, Father interrupted to ask questions in response to DCS’s inquiries into prior abuse allegations against

him. The trial court paused the proceedings so Father’s counsel could explain matters off the record. During the second day, Father stated that he was not ready to proceed with his testimony, so DCS moved on with its other witnesses. Father did not avail himself of the opportunity to participate in the third and fourth days of the hearing as he could not be reached even though, according to his counsel, he had notice. Under the circumstances, we conclude that the risk of error in the procedure employed by the State was low. *See D. T.*, 981 N.E.2d at 1226 (finding risk of error was low and thus no due process violation where court did not appoint minor father a GAL in a termination of parental rights proceeding where minor father was represented by counsel). Father has not shown that his due process rights were violated.

## ***2. Sufficiency***

[18] The Fourteenth Amendment to the United States Constitution protects a parent’s right to raise his or her children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although “[a] parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests[,]’” parental interests are not absolute and “must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights.” *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (*quoting Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, the parent-child relationship may be terminated when a parent is unable or unwilling to meet their parental obligations. *Id.* We are cognizant that involuntary termination of parental rights is the most severe

sanction a court can impose because it severs all rights of a parent to his or her child. *Matter of D.G.*, 702 N.E.2d 777, 780-81 (Ind. Ct. App. 1998). Therefore, termination is considered a last resort, “available only when all other reasonable efforts have failed.” *Id.* at 781.

[19] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re G.F.*, 135 N.E.3d 654, 660 (Ind. Ct. App. 2019). Rather, 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 its 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*. In light of the applicable clear and convincing evidence standard, we review to determine whether the evidence clearly and convincingly supports the findings and whether the findings clearly and convincingly support the judgment. *In re G.F.*, 135 N.E.3d at 660.

[20] Before an involuntary termination of parental rights may occur in Indiana, Ind. Code § 31-35-2-4 provides that the petition filed by DCS must allege in relevant part, that

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree [and]

...

(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) there is a satisfactory plan for the care and treatment of the child.

If the juvenile court finds that the allegations in the termination petition have been established by clear and convincing evidence, it "shall" terminate the parent-child relationship and enter findings supporting its conclusions. I.C. § 31-35-2-8.

[21] Father first argues that the evidence is insufficient to support the court's conclusion that I.C. § 31-35-2-4(b)(2)(B)(i) has been satisfied. In this regard, the court concluded:

29. The Court concludes that the primary reason for the removal of the child and the continued placement of the child outside the care of Father is due to his instability, drug use, mental illness, and the physical abuse of [Child]'s older sibling. The Court further concludes that the child remains placed outside the care

of Father . . . as a result of his failure to participate in and benefit from services that were designed to remedy the reasons that lead to the removal of [Child].

30. The Court acknowledges that it has been held that “mental [disability] of the parents, standing alone, is not a proper ground for terminating parental rights.” . . . However, . . . the Indiana Supreme Court ruled termination is proper when a parent with mental health issues fails to comply with services. *In Re N.G.*, 51 N.E.3d 1167 (Ind. 2016) (affirming the trial court’s order terminating parental rights due to Mother’s mental health, her lack of compliance and progress in counseling, her history of not taking her medication as prescribed, and her limited insight with respect to her mental health and behavioral issues).

31. Here, [Father] had the opportunity to remedy the conditions that resulted in the continued placement of [Child] outside of his care. Further, at an absolute minimum, he had the opportunity to remain in contact with [DCS] to inform the State about whether he was participating in services in California. Here, he has done neither, and his child languishes without permanency.

*Id.* at 195-96. The court’s unchallenged findings and conclusions adequately summarize the evidence presented by DCS in support of termination. Father did not avail himself of the opportunity to counter DCS’s evidence that he has not participated in any type of service aimed at addressing his mental health or substance abuse issues. In sum, DCS presented clear and convincing evidence that supports the court’s determination that there is a reasonable probability that the conditions that resulted in Child’s removal will not be remedied.

[22] Father next argues that the evidence does not support the court's determination that termination is in the best interests of Child. We disagree. Both the GAL and the FCM discussed the need for permanency and stability and testified that termination of Father's parental rights is in the best interests of Child. They noted that Father has not seen Child since she was three weeks old. At the time of the termination proceedings, Child was two and a half and had no relationship with Father. This, in addition to the testimony of the GAL and FCM, is clear and convincing evidence supporting the court's determination that termination of Father's parental rights was in Child's best interests. *See In re J.S.*, 906 N.E.2d 226, 236 (Ind. Ct. App. 2009) ("the recommendations of the case manager and court-appointed 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").

[23] Finally, Father argues that DCS does not have a satisfactory plan for Child. He argues that it is not appropriate to give a pre-adoptive family deference over the rights of a biological parent. In order for the trial court to terminate the parent-child relationship, the trial court must find that there is a satisfactory plan for the care and treatment of the child. *In re B.D.J.*, 728 N.E.2d 195, 204 (Ind. Ct. App. 2000). This plan need not be detailed, so long as it offers a general sense of the direction in which the child will be going after the parent-child relationship is terminated. *Id.* DCS informed the court that Child had been

placed in a pre-adoptive foster home and that DCS's plan is for Child to be adopted by her foster parents. This plan is satisfactory.

[24] In sum, the court's order terminating Father's parental rights is supported by clear and convincing evidence.

[25] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.