

## 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

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In re the Termination of the  
Parent-Child Relationship of  
M.C. and L.C. (Minor Children)  
and T.C. (Father),  
*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,  
*Appellee-Petitioner.*

August 24, 2021

Court of Appeals Case No.  
21A-JT-489

Appeal from the Jefferson Circuit  
Court

The Honorable Donald J. Mote,  
Judge

Trial Court Cause Nos.  
39C01-2006-JT-23 and 39C01-  
2006-JT-24

**Mathias, Judge.**

[1] T.C. (“Father”) appeals the Jefferson Circuit Court’s order terminating his parental rights to his minor children. Father claims that the trial court’s order terminating his parental rights is not supported by clear and convincing evidence.

[2] We affirm.

### **Facts and Procedural History**

[3] Father and J.B. (“Mother”) have two children: M.C., born in November 2015 and L.C., born in July 2017. In June 2019, Mother’s friend took three-and-a-half-year-old M.C. and nearly two-year-old L.C. to the Jefferson County Sheriff’s Department because she believed that Mother had abandoned them. The children were hungry, dirty, and wearing soiled clothing. Law enforcement located Mother, who admitted that she left the children with a friend and had not responded to her friend’s attempts to communicate with her. Mother and Father did not live together, but after the Indiana Department of Child Services (“DCS”) determined that Father was not a viable placement for the children, they were placed in foster care.

[4] On August 8, 2019, the children were adjudicated Children in Need of Services (“CHINS”) after both parents admitted that the children were CHINS. Father was initially engaged in services, attended case management meetings, and participated in visitation with the children. He provided food for the children during visitations and attempted to discipline them. Although he was not fully compliant, Father participated in services and visitation until April 2020.

[5] However, there were issues during certain visitations. For example, on October 2019, during a supervised visitation, two-year-old L.C. ran out of a gated playground, which Father failed to notice. Tr. p. 50. The visitation supervisor chased after the child and returned him to the playground. Father also missed several visitations between September 2019 and March 2020. The visitation supervisor ended one visit early because Father was not coherent and was unable to care for the children. *Id.* at 49–50. And in April 2020, when restrictions were put in place due to the onset of the COVID-19 pandemic, Father told the visitation supervisor that he did not want to participate in video visitation. *Id.* at 46.

[6] Father also did not have stable housing, employment, or reliable transportation during the CHINS and termination proceedings. *Id.* at 59. In addition, Father has a significant substance abuse problem. *Id.* at 81. He tested positive for methamphetamine, amphetamine, and marijuana numerous times during these proceedings. He also failed to appear for drug testing on several dates. Father agreed to participate in a thirty-day inpatient substance abuse program but signed himself out during the first day of the program. *Id.* at 69. In May 2020, Father was found in contempt of court after failing to participate in court-ordered therapy, missing visitation with the children, and testing positive for methamphetamine and marijuana two months earlier. Appellant's App. Vol. V, p. 79.

[7] On June 19, 2020, DCS filed a verified petition for termination of parental rights. Fact-finding hearings were held remotely on November 6, 2020, and

January 15, 2021. In January 2021, Father had pending criminal charges in two separate causes: Level 4 felony child solicitation and misdemeanor receiving stolen auto parts.<sup>1</sup> Tr. p. 83. Father was incarcerated during the fact-finding hearings.

[8] On February 22, 2021, the trial court issued its order terminating Father's parental rights to the children, and found in pertinent part:

39. In late July 2019, DCS made a referral for Father to the Fatherhood Engagement Program (FEP) with A.J. Mistry and Ireland Home-Based Services. The FEP curriculum assists fathers through a curriculum with the goal of stable housing, gainful employment, and reliable transportation. Father was initially willing to participate. He was appropriate, eager to have his children returned to his care, and wanted to remain substance free.

40. However, Father never achieved stable housing, legitimate employment, nor his driver's license. Father did not achieve these goals due to his own lack of following through with assignments.

41. Recovery Coach Danielle Caldwell at Centerstone echoed Mr. Mistry's assessment of Father. Based on Ms. Caldwell's testimony, the Court finds Father made no effort to get his license. He made no effort to complete his GED, despite Ms.

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<sup>1</sup> Concerning the child solicitation charge, the State alleged that Father initiated a chat conversation with a social media profile depicting a fourteen-year-old female. Father arranged to meet the purported teenager in a public location for the purpose of engaging in sexual intercourse. When Father arrived at the predetermined location, however, he was taken into custody as he approached an undercover female law enforcement officer who he believed to be the fourteen-year-old girl. Father was subsequently convicted of Level 4 felony child solicitation. And the Odyssey Case Management system indicates that, on July 9, 2021, Father was ordered to serve a five-year executed sentence for that conviction. Father also pleaded guilty to receiving stolen auto parts and was placed on a consecutive term of supervised probation for one year.

Caldwell noting that a GED program was just down the hall from her office. Father managed to get a job at Lowe's but lost it after the background check was completed. Ms. Caldwell indicated that Father made no effort on behalf of his Children.

42. Neither Mother, nor Father was consistent with visitation/parenting time. Both parents initially received two visits per week for two hours. However, due to lack of attendance, both Mother and Father were required to confirm visits in the morning prior to attending the visitation. One visit was ended early because Father arrived under the influence and was incoherent.

43. Father missed more visits than he attended as the case wore on. He would often cancel with the visit supervisor even after she picked the Children up for a visit, which made the Children emotional and sometimes caused them to act out in a negative way. When Father did show up for visits, he was unprepared. According to Ms. Herald, parents are expected to come prepared for the visit, bringing diapers, supplies, and a meal. Father never brought appropriate diapers and did not bring dinner. He would sometimes bring packs of fruit snacks or "gummies."

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45. To address Father's substance abuse issues, Father completed a Substance Use Disorder Assessment ("SUDA") on August 16, 2019. At that time, he was drug screened and tested positive for methamphetamine and amphetamine. It was recommended that he attend therapy and work with a recovery coach. A referral was made for recovery coaching with Danielle Caldwell at Centerstone.

46. The first appointment occurred on August 30, 2019. Father was very consistent initially and was scheduled to meet with her weekly, but that he started to drop off. By March 2020, Father's situation and his attendance had dramatically deteriorated.

47. Father last met with Ms. Caldwell on June 29, 2020, to work out the logistics for entering an inpatient rehabilitation program. DCS and Centerstone worked out the logistics and transportation issues and Father entered the CRC recovery program on July 6, 2020. He walked out within 24 hours.

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54. The Court finds that Father's nominal participation in FEP means little in light of his across-the-board lack of participation in drug abuse services such as in-patient treatment, out-patient treatment, recovery coach, and drug screens. Father continues to use methamphetamine. The threat of jail time did nothing to spur him to comply with this Court's Dispositional Decree.

Appellant's App. Vol. V, pp. 93–95. The trial court concluded that DCS proved there is a reasonable probability that the conditions that resulted in the children's removal or continued placement outside the home would not be remedied by Father, that continuation of the parent-child relationship poses a threat to the children's wellbeing, and that termination of Father's parental rights was in the children's best interests. *Id.* at 101–02. The trial court terminated Mother's parental rights in the same order.

[9] Father now appeals.<sup>2</sup>

## Standard of Review

[10] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124

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<sup>2</sup> Mother does not participate in this appeal.

N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). We neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the trial court’s judgment. *Id.* In deference to the 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. *Id.*

- [11] In determining whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine 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.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

## Discussion and Decision

- [12] Importantly, the purpose of terminating parental rights is not to punish parents but instead to protect the child. *In re S.P.H.*, 806 N.E.2d 874, 880 (Ind. Ct. App. 2004). Although parental rights have a constitutional dimension, the law allows for their termination when the parties are unable or unwilling to meet their responsibilities as parents. *Id.* Indeed, parental interests must be subordinated to

the child's interests in determining the proper disposition of a petition to terminate parental rights. *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009).

- [13] We also observe that the parent-child relationship is one of society's most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. For this reason, Indiana law sets a high bar to sever that relationship by requiring DCS to prove the elements enumerated in [Indiana Code section 31-35-2-4](#) by clear and convincing evidence. [I.C. § 31-37-14-2](#).
- [14] Pertinent to this appeal, [Indiana Code Section 31-35-2-4\(b\)\(2\)\(B\)](#) provides in relevant part that a petition to terminate parental rights must allege that one of the following is true: (1) there is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the parents' home will not be remedied; (2) there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the child's well-being; or (3) the child has, on two separate occasions, been adjudicated a CHINS. [I.C. § 31-35-2-4\(b\)\(2\)\(B\)](#). The petition must also allege that termination is in the child's best interests and that there is a satisfactory plan for the child's care and treatment. [I.C. § 31-35-2-4\(b\)\(2\)\(C\), -\(D\)](#). If the trial court finds that the allegations in a petition are true, the court shall terminate the parent-child relationship. [I.C. § 31-35-2-8\(a\)](#).

#### *A. Threat to the Children's Well-Being*

- [15] Father claims that DCS failed to present clear and convincing evidence to prove the factors enumerated in [Indiana Code section 31-35-2-4\(b\)\(2\)\(B\)](#). We

disagree. And because section [31-35-2-4\(b\)\(2\)\(B\)](#) is written in the disjunctive, we only address Father’s argument concerning whether DCS proved there is a reasonable probability that the conditions that resulted in the children’s removal or the reasons for placement outside Father’s home will not be remedied. [I.C. § 31-35-2-4\(b\)\(2\)\(B\)\(i\)](#).

- [16] “We engage in a two-step analysis to determine whether the conditions that led to the Children’s placement outside the home will not be remedied.” [In re K.T.K.](#), 989 N.E.2d 1225, 1231 (Ind. 2013). “First, we must ascertain what conditions led to their placement and retention in foster care. Second, we ‘determine whether there is a reasonable probability that those conditions will not be remedied.’” [Id.](#) (quoting [In re I.A.](#), 934 N.E.2d 1127, 1134 (Ind. 2010)). The second step requires a court “to judge a parent’s fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation.” [In re R.S.](#), 158 N.E.3d 432, 439-40 (Ind. Ct. App. 2020). “Habitual conduct may include a parent’s prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment.” [Id.](#) at 440. “The trial court may also consider services offered to the parent by DCS and the parent’s response to those services as evidence of whether conditions will be remedied.” [Id.](#)

- [17] From the record before us, we can reasonably conclude that Father has never had the children primarily in his care. Mother and Father did not reside

together when the children were removed from Mother's care. And DCS did not place the children with Father because of his lack of stability, income, transportation, and Father's significant drug use.

[18] Father participated in services after the children were adjudicated CHINS. He attended the Fatherhood Engagement Program sessions and had successful visitations with his children. But as the case progressed, Father's visitation with the children became inconsistent, and the visitation supervisor observed that Father was not always engaged with the children. Father also refused video visitation with the children after restrictions on in-person visitation were put in place due to the COVID-19 pandemic.

[19] Father also continued to test positive for methamphetamine and marijuana throughout the proceedings. Father did not take steps to address his substance abuse issue. When his caseworkers arranged for Father to participate in a thirty-day inpatient treatment program, Father checked himself out of the program within the first twenty-four hours.

[20] Father has not demonstrated that he is able to care for his children. And he did not benefit from the services that he participated in. His caseworker encouraged him to get his GED and driver's license, but Father did not take any steps toward achieving those goals. He lives with his mother and does not have transportation or employment. Father was only employed for a few weeks during the pendency of these proceedings. And Father does not have any other source of income. He was also incarcerated for the last few months of these

proceedings on a child solicitation charge. In June 2021, Father pleaded guilty to the charge, and he was subsequently ordered to serve a five-year executed sentence.

- [21] For all these reasons, we conclude that DCS proved by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal or the reasons for placement outside Father's home will not be remedied.<sup>3</sup>

*B. Best Interests of the Children*

- [22] Father also claims that DCS did not prove that termination was in the children's best interests. [I.C. § 31-35-2-4\(b\)\(2\)\(C\)](#). Deciding whether DCS has satisfied its burden on this element is “[p]erhaps the most difficult determination” a court must make in a termination proceeding. [In re E.M.](#), 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the trial court must look beyond the factors identified by DCS and examine the totality of the evidence. [A.D.S.](#), 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. [Id.](#) at 1155. Central among these interests is a child's need for permanency. [In re G.Y.](#), 904 N.E.2d 1257, 1265

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<sup>3</sup> Father relies primarily on his initial participation in services and visitation in the first few months following the CHINS adjudication in support of his argument. He also claims that he has learning disabilities and he should have received a psychological evaluation and mental health services. But the only evidence in the record concerning disabilities and mental health issues is a reference to Father's ADHD diagnosis. The caseworkers believed that Father's emotional outbursts and issues comprehending certain directives were a result of his methamphetamine use.

(Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648.

[23] When the children were adjudicated CHINS, DCS caseworkers observed many concerning behaviors, particularly in three-year-old M.C. The child could not speak in an age-appropriate manner. And while she was aggressive toward her younger brother, she also did not want others to take care of her brother’s needs. The children would scream and bang their heads on the floor when they were upset. At mealtimes, they would eat as quickly as possible, shoving food in their mouths. The children’s behaviors have improved dramatically while in foster care, and M.C. has shown significant progress in speech therapy.

[24] The children’s caseworkers and M.C.’s therapist believed that continuing the parent-child relationship would be emotionally damaging for the children and detrimental to their well-being. Tr. pp. 73, 82. Father has never demonstrated that he is capable of being the children’s caregiver, and he is currently incarcerated. Simply put, the children need stability and permanence that Father cannot provide.

[25] For all these reasons, we conclude that DCS proved by clear and convincing evidence that termination of Father’s parental rights was in the children’s best interests.

## **Conclusion**

[26] The trial court’s order terminating Father’s parental rights to his children is supported by clear and convincing evidence.

[27] Affirmed.

Tavitas, J., and Weissmann, J., concur.