

## 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 the Matter of the Involuntary  
Termination of the Parent-Child  
Relationship of: L.C. (Minor  
Child),

and

C.C. (Father),

*Appellant-Respondent,*

v.

The Indiana Department of  
Child Services,

*Appellee-Petitioner.*

June 8, 2021

Court of Appeals Case No.  
21A-JT-4

Appeal from the Scott Superior  
Court

The Honorable Marsha Owens  
Howser, Judge

Trial Court Cause No.  
72D01-2006-JT-62

**Tavitas, Judge.**

## **Case Summary**

- [1] C.C. (“Father”) appeals the trial court’s termination of his parental rights with respect to minor child, L.C. (“Child”).<sup>1</sup> Father’s rights were terminated after an approximately eighteen-month period during which Father was either incarcerated, non-compliant with a court order to abstain from drug use, or non-compliant with court-ordered requirements for visitation with Child. The Scott County Office of the Department of Child Services (“DCS”) presented sufficient evidence to terminate Father’s parental rights, and we are unmoved by Father’s claim that occasional compliance with services is a satisfactory reason to prolong the proceedings. Accordingly, we affirm.

## **Issue**

- [2] Father raises a single issue on appeal, which we restate as whether DCS presented sufficient evidence to terminate Father’s parental rights.

## **Facts**

- [3] Child was born in March 2019. One day after his birth, DCS received a report that Child had been exposed to drugs, and Family Case Manager (“FCM”) Melissa Buie went to the hospital to investigate. Child’s meconium subsequently tested positive for illicit drugs. Buie was able to corroborate the

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<sup>1</sup> Mother consented to the termination of her parental rights and is not a party to this appeal.

report of drug exposure and interviewed Father. Father denied that he abused drugs, and he initially agreed to a drug screen; however, he rescinded his agreement and refused to be screened. Father was “barely awake[ ] enough to acknowledge that [DCS was] there” and spoke with DCS “in a prone position.” Tr. Vol. II. p. 13. DCS was unable to secure any sober caregivers for Child and, therefore, removed Child to DCS custody. Child was subsequently placed with his maternal aunt.

[4] On March 11, 2019, DCS filed a petition alleging that Child was a child in need of services (“CHINS”). After a fact-finding hearing on June 25, 2019—at which Father appeared and admitted that Child was a CHINS—the trial court adjudicated Child as a CHINS. The trial court held a dispositional hearing on August 20, 2019. Father was present at the hearing, via transport from the Jackson County Jail. In its dispositional order, issued August 22, 2019, the trial court ordered Father to: (1) notify the FCM of any arrest or criminal charges; (2) enroll in all programs recommended by the FCM within thirty days; (3) keep all appointments with all service providers, DCS, and a court-appointed special advocate (“CASA”); (4) maintain suitable, safe, and stable housing; (5) maintain a legal and stable source of income; (6) not use, consume, manufacture, trade, distribute, or sell any illegal controlled substances; (7) obey the law; (8) complete a parenting assessment; (9) complete a substance abuse assessment; and (10) submit to random drug screens. Appellant’s App. Vol. II pp. 54-56.

[5] During the pendency of the CHINS proceedings, between July 12, 2019, and January 13, 2020, Father was incarcerated on charges of possession of methamphetamine and possession of paraphernalia. Father participated in services while incarcerated and completed the court-ordered parenting assessment. Initially, Father complied with some services; however, he stopped participating in individual therapy and the healthy start program and engaged in a total of only two sessions between January 2020 and October 2020. Although Father completed a domestic batterer assessment, he failed to participate in the resulting recommended services. Father did participate in visitations with Child shortly after his release from incarceration; however, Father consistently rescheduled, cancelled, arrived late, or left early. When Father was present for visits, he did engage with Child.

[6] Father was referred multiple times for a drug and alcohol assessment but failed to comply with those referrals. Between January 2020 and October 2020, Father submitted to thirty-three drug screens. Of those, twenty-six were positive for amphetamine, methamphetamine, or THC. Father's last negative drug screen was in April 2020. By August 6, 2020, Father was responding sporadically to the FCM, but he did "eventually" respond "on most occasions." Tr. Vol. II. pp. 24-25. DCS filed a motion to suspend Father's services on September 2, 2020, which the trial court granted on October 6, 2020.

[7] On June 5, 2020, DCS filed a petition for termination of Father's parental rights. The trial court held a fact-finding hearing on the petition for termination of parental rights on October 22, 2020. Father did not attend. FCM Natasha

Thompson recounted Father's non-compliance with services during her testimony and stated that, in her opinion, adoption with Child's then-current placement was in Child's best interests. FCM Thompson further testified that Father was unlikely to remedy the problems that led to Child's removal and that a continued relationship between Father and Child would be a threat to Child's well-being.

[8] CASA Jennifer West testified at the hearing. West stated that Child was excelling in his temporary placement. West further testified:

I contacted [Father] [ ] when he got out of jail, and I said, ["]what do you need from me to help you?["] And that's not a typical CASA role, but I wanted him to have every advantage he could, if he wanted his son back. And . . . it was silence. There was nothing.

Tr. Vol. II, p. 34. West agreed that a continued relationship between Father and Child would pose a threat to Child's wellbeing and that Father's parental rights should be terminated.

[9] Finally, Child's maternal aunt confirmed that Child was excelling in his placement and expressed her desire to adopt Child. The trial court granted the petition to terminate Father's parental rights on December 4, 2020. The trial court entered findings of fact and conclusions thereon that reflected the evidence submitted at the fact-finding hearing, including Father's noncompliance with services. Appellant's App. Vol. II pp. 53-71. This appeal ensued.

## Analysis

[10] As an initial matter, we note that Father does not specifically challenge any of the trial court’s findings of fact as clearly erroneous. Father has, thereby, waived any arguments relating to the unchallenged findings. *See In re S.S.*, 120 N.E.3d 605, 614 n.2 (Ind. Ct. App. 2019) (explaining that this Court will accept unchallenged trial court findings as true). Additionally, Father has failed to substantially challenge the trial court’s conclusions, pursuant to Indiana Code Section 31-35-2-4, that: (1) 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 or that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the Child; (2) termination of Father’s parental rights is in the best interests of the Child; and (3) a satisfactory plan exists for the care and treatment of the Child.<sup>2</sup> To the extent Father does argue that the trial court’s conclusions are clearly erroneous, Father has waived those arguments by his failure to make a cogent argument thereon. *Runkel v. Miami Cty. Dep’t of Child Servs.*, 875 N.E.2d 369, 373 (Ind. Ct. App. 2007) (citing Ind. Appellate Rule 46(A)(8)(a)), *trans. denied*.

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<sup>2</sup> The “argument” section in Father’s brief is essentially just a repetition of the “facts” section. Of Father’s thirteen pages of briefing, we can discern only a small handful of sentences that might be described as “argument.” Those sentences do not comport with the requirements that arguments before this Court “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22.” Ind. App. R. 46(A)(8)(a).

[11] Waiver notwithstanding, the Fourteenth Amendment to the United States Constitution protects the traditional rights of parents to establish a home and raise their children. *In re K.T.K. v. Indiana Dept. of Child Services, Dearborn County Office*, 989 N.E.2d 1225, 1230 (Ind. 2013). “[A] parent’s interest in the upbringing of [his or her] child is ‘perhaps the oldest of the fundamental liberty interests recognized by th[e] [c]ourt[s].’” *Id.* (quoting *Troxel v. Granville*, 530 U.S. 57, 65, 120 S. Ct. 2054 (2000)). We recognize that parental interests are not absolute and can be subordinated to the child’s best interests when determining the proper disposition of a petition to terminate parental rights. *Id.*; see also *Matter of Ma.H.*, 134 N.E.3d 41, 45 (Ind. 2019) (“Parents have a fundamental right to raise their children—but this right is not absolute.”), *cert. denied*, 140 S. Ct. 2835 (2020), *reh’g denied*. “When parents are unwilling to meet their parental responsibilities, their parental rights may be terminated.” *Ma.H.*, 134 N.E.3d at 45-46.

[12] Pursuant to Indiana Code Section 31-35-2-8(c), “[t]he trial court shall enter findings of fact that support the entry of the conclusions required by subsections (a) and (b)” when granting a petition to terminate parental rights.<sup>3</sup> Here, the

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<sup>3</sup> Indiana Code Sections 31-35-2-8(a) and (b), governing termination of a parent-child relationship involving a delinquent child or CHINS, provide as follows:

- (a) Except as provided in section 4.5(d) of this chapter, if the court finds that the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship.

trial court did enter findings of fact and conclusions thereon in granting DCS's petition to terminate Father's parental rights. We affirm a trial court's termination of parental rights decision unless it is clearly erroneous. *Ma.H.*, 134 N.E.3d at 45. A termination of parental rights decision is clearly erroneous when the trial court's findings of fact do not support its legal conclusions, or when the legal conclusions do not support the ultimate decision. *Id.* We do not reweigh the evidence or judge witness credibility, and we consider only the evidence and reasonable inferences that support the court's judgment. *Id.*

[13] Indiana Code Section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code Section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege, in 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.

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(b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.



- (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.

DCS must establish these allegations by clear and convincing evidence. *In re V.A.*, 51 N.E.3d 1140, 1144 (Ind. 2016).

[14] Father suggests that the trial court erred when it concluded that the circumstances warranting Child’s removal are unlikely to be rectified.<sup>4</sup> “In determining whether ‘the conditions that resulted in the [the Child’s] removal . . . will not be remedied,’ we ‘engage in a two-step analysis.’” *In re E.M.*, 4 N.E.3d 636, 642-43 (Ind. 2014) (quoting *K.T.K.*, 989 N.E.2d at 1231). “First, we identify the conditions that led to removal; and second, we ‘determine

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<sup>4</sup> Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Consequently, DCS was required to demonstrate by clear and convincing evidence a reasonable probability exists that either: (1) the conditions that resulted in the Child’s removal or the reasons for placement outside the home of the parents will not be remedied; (2) the continuation of the parent-child relationship poses a threat to the well-being of the Child; or (3) the Child has, on two (2) separate occasions, been adjudicated a CHINS. *See, e.g., Ma.H.*, 134 N.E.3d at 46 n.2. The trial court also found a reasonable probability that the continuation of the parent-child relationship posed a threat to the Child’s well-being. Because we find sufficient evidence to support the trial court’s finding regarding a reasonable probability that conditions will not be remedied, we need not address the trial court’s finding regarding a threat to the Child’s well-being.

whether there is a reasonable probability that those conditions will not be remedied.” *Id.* In analyzing this second step, the trial court judges the parent’s fitness “as of the time of the termination proceeding, taking into consideration evidence of changed conditions.” *Id.* (quoting *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 152 (Ind. 2005)). “We entrust that delicate balance to the trial court, which has discretion to weigh a parent’s prior history more heavily than efforts made only shortly before termination.” *Id.* “Requiring trial courts to give due regard to changed conditions does not preclude them from finding that parents’ past behavior is the best predictor of their future behavior.” *Id.*

[15] Father further suggests that terminating his parental rights is not in the best interests of Child. In determining what is in the best interests of a child, the trial court is required to look at the totality of the evidence. *Z.B. v. Indiana Dep’t of Child Servs.*, 108 N.E.3d 895, 903 (Ind. Ct. App. 2018), *trans. denied*. In so doing, the trial court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *K.T.K.*, 989 N.E.2d at 1235. A trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Additionally, a child’s need for permanency is a "central consideration" in determining the best interests of a child. *Id.*

[16] The trial court found that: [t]here is a reasonable probability that: [ ] [t]he conditions which resulted in the child's removal and continued placement outside the home will not be remedied by Father[,]” and that termination of the parent-child relationship is in Child's best interest. Appellant's App. Vol. II. p. 70. Father was arrested on drug charges during the CHINS pendency. Father rarely complied with services. Moreover, Father tested positive for amphetamine, methamphetamine, or THC on twenty-six out of thirty-three drug screenings over a ten-month period. By his own admission, Father frequently rescheduled or arrived late for many visitation appointments with Child. Appellant's Br. p. 7. Father: (1) failed to complete individual therapy; (2) failed to complete the healthy start program; (3) failed to participate in recommended domestic batterer services; and (4) failed to complete an alcohol or drug assessment. Given Father's lack of progress in remedying the conditions that resulted in the Child's continued placement outside of Father's care, Father has failed to demonstrate that the trial court's finding that those conditions are unlikely to be remedied is clearly erroneous.

[17] The FCM, CASA, maternal aunt, and trial court all agreed that termination of Father's parental rights is in Child's best interest. Father has advanced no reason why the deluge of support for the trial court's undisputed conclusions should be reconsidered, and, therefore, has failed to demonstrate that those conclusions are clearly erroneous. Accordingly, the trial court did not clearly err when it terminated Father's parental rights.

## Conclusion

[18] The trial court did not clearly err when it terminated Father's parental rights.

Accordingly, we affirm.

[19] Affirmed.

Najam, J., and Pyle, J., concur.