

## 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  
B.C. (Minor Child);

L.R.C. (Father),  
*Appellant-Respondent*

v.

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

March 22, 2022

Court of Appeals Case No.  
21A-JT-2003

Appeal from the Scott Superior  
Court

The Honorable Marsha Owens  
Howser, Judge

Trial Court Cause No.  
72D01-2010-JT-84

**Pyle, Judge.**

## Statement of the Case

[1] L.R.C. (“Father”) appeals the termination of the parent-child relationship with his son, B.C. (“B.C.”).<sup>1</sup> He contends that the Department of Child Services (“DCS”) failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in B.C.’s removal or the reasons for placement outside Father’s home will not be remedied; (2) a continuation of the parent-child relationship poses a threat to B.C.’s well-being; and (3) termination of the parent-child relationship is in B.C.’s best interests. Concluding that there is sufficient evidence to support the trial court’s termination of the parent-child relationship, we affirm the trial court’s judgment.

[2] We affirm.

### Issue

Whether there is sufficient evidence to support the termination of the parent-child relationship.

### Facts

[3] The evidence and reasonable inferences that support the judgment reveal that Father is the parent of B.C., who was born in January 2014. In January 2019, DCS received a report that Father was neglecting B.C. The case was assigned

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<sup>1</sup> B.C.’s mother (“Mother”) voluntarily relinquished her parental rights and is not a party to this appeal.

to DCS Family Case Manager Aaron Tedrow (“FCM Tedrow”), who learned that B.C., Father, Stepmother (“Stepmother”), and Stepmother’s adult child were living in a Ford Econoline van. When FCM Tedrow located the van, B.C. and Stepmother were the only family members in the van, and B.C. was sleeping on a mattress in the back of the van. The outside temperature was below freezing, and there was no heat on in the van. In addition, FCM Tedrow noticed that the floor of the van was strewn with trash, including used feminine hygiene products, an empty Vienna Sausage can, and an empty prescription bottle. The ninety-pill prescription had been filled the previous week in the name of another individual, and the label that would have identified the medication’s name had been torn off the bottle. FCM Tedrow also noticed exposed wires inside the van.

[4] When B.C. woke up, B.C. told FCM Tedrow that he was hungry and that he had recently not been able to eat as much food as he would have liked. FCM Tedrow noticed that there was no food in the van. In addition, B.C. looked as if he had not bathed in a week, and the only clothes that B.C. had were the ones that he was wearing. FCM Tedrow also noticed that Stepmother appeared to be under the influence of drugs. Stepmother told FCM Tedrow that she and Father had both recently been to a Suboxone clinic. FCM Tedrow asked Stepmother to submit to a drug screen; however, she refused.

[5] DCS removed B.C. from Father and placed B.C. in foster care. Thereafter, DCS filed a petition alleging that B.C. was a child in need of services (“CHINS”). Father did not appear at the CHINS factfinding hearing. In

March 2019, the trial court adjudicated B.C. to be a CHINS. The following month, April 2019, the trial court issued a CHINS dispositional decree, which ordered Father to: (1) maintain weekly contact with DCS; (2) provide safe, suitable, and appropriate housing for B.C.; (3) abstain from the use of illegal controlled substances; (4) participate in a substance abuse assessment and follow the assessor's recommendations; (5) submit to random drug screens; (6) attend supervised visits with B.C.; (7) participate in all DCS recommended programs; and (8) be an effective caregiver who possesses the necessary skills, knowledge, and abilities to provide B.C. with stability.

[6] Father attended a substance abuse assessment at LifeSpring Health Systems in May 2019. During the assessment, forty-eight-year-old Father reported a twenty-year history of opiate use, which had previously included daily intravenous use of heroin. Father further told the assessor that he had been using Suboxone for two years. The assessor diagnosed Father with opioid dependence and recommended that he participate in group addiction counseling, medication training and support, pharmacological management, and individual therapy.

[7] Following a July 2019 periodic case review hearing, the trial court noted that Father had attended the substance abuse assessment. However, the trial court also noted that Father had failed to submit to requested drug screens and had not secured employment. In addition, Father's visits with B.C. had been inconsistent.

[8] In August 2019, LifeSpring Health Systems discharged Father from its programs because Father had failed to follow any of the assessor's May 2019 recommendations. One month later, in September 2019, Father was charged in Clark County with Level 6 felony possession of methamphetamine and Class A misdemeanor driving while suspended with a prior conviction within ten years. As a result of these charges, Father's probation officer in Washington County filed a motion to revoke Father's suspended sentence for a January 2019 Class A misdemeanor criminal trespass conviction. In November 2019, Father pled guilty to both offenses in Clark County and was sentenced to time in the county jail. After he had served that sentence, Father was transferred to Washington County to serve time on the revoked suspended sentence. Father was released from incarceration in April 2020.

[9] Shortly thereafter, Father contacted DCS Family Case Manager Emily Spellman ("FCM Spellman"), who had been assigned to B.C.'s case while Father was incarcerated. Father told FCM Spellman that he did not have a substance abuse problem but that he needed to find stable housing and employment. FCM Spellman referred Father to the following services: (1) random drug screens; (2) supervised visitation with B.C.; and (3) a parenting assessment. At the end of April, Father tested positive for Suboxone. FCM Spellman asked Father to submit a Suboxone prescription; however, Father failed to comply with her request. Father also missed his first scheduled visit with B.C.

[10] At the beginning of June 2020, Jennifer Garvin (“Garvin”) from Ireland Home Based Services went to Father’s temporary home to complete a parenting assessment. At that time, Father and Stepmother were living in a mobile home with an elderly gentlemen. Father told Garvin that it was not safe for her to enter the mobile home because there were holes in the floors and the ceilings were falling down. In addition, there was black mold in the mobile home, and Garvin noticed that Father and Stepmother both smelled like mold. Garvin also noticed that there were multiple chickens running in and out of the mobile home. Father told Garvin that, because he had recently been released from jail, Father did not have employment, transportation, or stable housing. Following the assessment, Garvin referred Father to individual therapy to focus on his sobriety and home-based services to assist him in finding employment and housing. Shortly after participating in the assessment, Father was incarcerated again for sixteen days.

[11] Two months later, at the time of the August 2020 case review hearing, Father and Stepmother were living in a hotel, and Father was working as an independent contractor power washing houses. In addition, Ireland Home Based Services had closed Father’s home-based services referral due to Father’s lack of compliance with the program. Further, Father was not consistently submitting to drug screens.

[12] In September 2020, Father was arrested and jailed for possessing a synthetic drug or a synthetic drug lookalike, leaving the scene of an accident, and driving while suspended. Also in September 2020, FCM Spellman obtained a drug

screen from Father. The drug screen was positive for amphetamines, methamphetamine, heroin metabolites, morphine, and fentanyl. The level of fentanyl was 236.1 nanograms per milliliter, which was the highest level of fentanyl that FCM Spellman had ever seen in drug screen test results.

[13] In October 2020, FCM Spellman went to Father's home to talk to him about his drug screen results and to share her concern about the elevated level of fentanyl in the results. When FCM Spellman arrived at Father's home, Father appeared to be under the influence of drugs. His eyes were closing, his head was dropping, and he appeared to be completely incapacitated. Stepmother asked to see the drug screen results because she wanted "to make sure that [they] were getting the good stuff." (Tr. Vol. 2 at 94). On October 9, Father's drug screen was positive for fentanyl.

[14] The following week, Father went to the DCS office for a family team meeting and again appeared to be under the influence of drugs. Following the team meeting, Father returned home, and FCM Spellman supervised a Zoom remote visit between Father and B.C. Father still appeared to be under the influence of drugs during the visit, and six-year-old B.C. asked to end the visit after twenty minutes. FCM Spellman immediately went to Father's house to ask him to submit a drug screen. When FCM Spellman arrived at Father's home, Father stumbled out the front door. FCM Spellman asked to enter the home, and Stepmother told her that she would need to wait. Five minutes later, Father let FCM Spellman into the house and submitted to a drug screen, which was positive for amphetamines, methamphetamine, and fentanyl.

[15] DCS filed a petition to terminate Father’s parental rights in October 2020. The trial court held a two-day hearing on the termination petition in March 2021. At the hearing, the trial court heard the facts as set forth above. In addition, FCM Spellman testified that “the problems that [had] led to [B.C.]’s removal . . . [were not] likely to be remedied” because Father had not demonstrated the ability to provide B.C. with a stable environment. (Tr. Vol. 2 at 105). FCM Spellman acknowledged that Father had recently found housing and employment but pointed out Father’s ongoing substance abuse and legal issues rendered him unable to provide stability for his six-year-old child. According to FCM Spellman, the plan for B.C. was foster parent adoption. In addition, FCM Spellman testified that Father’s Zoom visits with B.C. had been inconsistent in 2020. Specifically, B.C. had only had Father’s attention in eight of nineteen visits. During the other visits, Father was walking around Walmart, driving, or simply inattentive to B.C.

[16] Also at the hearing, B.C.’s therapist, Nina Fox (“Therapist Fox”), who had been seeing B.C. for two years, testified that B.C. had initially suffered from anxiety related to Father and Stepmother, whom B.C. considered to be his mother. B.C. believed that “he was not good enough” for his parents. (Tr. Vol. 2 at 53). Further, when Father’s visits had become inconsistent and Father had not been attentive to B.C. during the visits, B.C. became sad and wondered why Father was not interested in listening to him. B.C. believed that Father did not love him. According to Therapist Fox, a continued relationship with Father would be mentally damaging to B.C. Therapist Fox further testified that, over



time, B.C. had become bonded with his foster parents and considered them to be his parents.

[17] Lastly, CASA Jennifer West (“CASA West”) testified that her biggest concern was Father’s inability to provide B.C. with stability and that her concern was demonstrated by Father choosing drugs over his son. CASA West further testified that termination was in B.C.’s best interests and that B.C. wanted to be adopted by his foster parents.

[18] Following the hearing, in August 2021, the trial court issued a detailed eight-page order terminating Father’s parental relationship with B.C. In the order, the trial court found that “Father ha[d] not shown any ability to remain drug free, which [was] a noted requirement to provide [B.C.] [with] a safe and stable environment.” (App. Vol. 2 at 84). The trial court further found that “Father’s failure to engage and make any progress in the underlying CHINS case ha[d] caused [B.C.] to feel like he [was] not important and lack[ed] value.” (App. Vol. 2 at 84).

[19] Father now appeals the termination of his parental relationship with B.C.

## **Decision**

[20] Father contends that there is insufficient evidence to support the termination of his parental rights. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *In re K.T.K.*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or

unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. When reviewing the termination of parental rights, we will not weigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.*

[21] A petition to terminate parental rights must allege:

(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 prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231.

- [22] We further note that, in determining whether to terminate a parent-child relationship, trial courts have discretion to weigh a parent's prior history more heavily than efforts made only shortly before termination and may find that a parent's past behavior is the best predictor of future behavior. *D.B.M. v. Indiana Department of Child Services*, 20 N.E.3d 174, 181-82 (Ind. Ct. App. 2014), *trans. denied*. We have also stated that the time for a parent to rehabilitate himself or herself is during the CHINS process, before DCS files a termination petition. *Prince v. Department of Child Services*, 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007).
- [23] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). "This deference recognizes a trial court's unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record." *Id.*
- [24] Here, Father first contends that the evidence is insufficient to show that there is a reasonable probability that: (1) the conditions that resulted in B.C.'s removal or the reasons for placement outside the parent's home will not be remedied; and (2) a continuation of the parent-child relationships poses a threat to B.C.'s well-being.
- [25] At the outset, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924

N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in B.C.'s removal or the reasons for his placement outside the home will not be remedied.

[26] When making a determination as to whether there is a reasonable probability that the conditions that resulted in a child's removal or continued placement outside the home will not be remedied, a trial court must judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed circumstances. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id.* 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.* 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.* DCS is not required to provide evidence ruling out all possibilities of change. *Id.* Rather, it need only establish a reasonable probability that the parent's behavior will not change. *Id.*

[27] Here, our review of the evidence reveals that B.C. was removed from Father because Father was unable to provide B.C. with a stable environment. During the two-year pendency of the CHINS proceedings, Father failed to comply with the CHINS dispositional order. Specifically, although Father, who has a

twenty-year history of opioid use, attended a substance abuse assessment, Father failed to follow the assessor's recommendations. Father attended a parenting assessment but failed to follow that assessor's recommendations as well. Further, Father continued to use methamphetamine and fentanyl throughout the proceedings, and one of Father's drug test results included the highest level of fentanyl that FCM Spellman had ever seen. Father also attended a family team meeting at the DCS office and a remote visit with B.C. while under the influence of drugs. We further note that, during the pendency of the proceedings, Father pled guilty to Level 6 felony possession of methamphetamine and was charged with another drug-related offense. In addition, Father was inconsistent in attending visits with B.C. and was frequently inattentive to B.C. when he did attend visits. This evidence supports the trial court's conclusion that there was a reasonable probability that the reasons for B.C.'s placement outside the home would not be remedied. We find no error.

[28] Father also argues that there is insufficient evidence that the termination was in B.C.'s best interests. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look at the totality of the evidence. *In re D.D.*, 804 N.E.2d 258, 267 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the court must subordinate the interests of the parents to those of the child involved. *Id.* Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. The trial court

need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* In addition, a child’s need for permanency is a central consideration in determining the child’s best interests. *In re G. Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Further, the testimony of the service providers may support a finding that termination is in the child’s best interests. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

[29] Here, our review of the evidence reveals that CASA West testified that termination was in B.C.’s best interests. The testimony of this service provider, as well as the other evidence previously discussed, supports the trial court’s conclusion that termination was in B.C.’s best interests.

[30] We reverse a termination of parental rights “only upon a showing of ‘clear error’—that which leaves us with a definite and firm conviction that a mistake has been made.” *Egley v. Blackford County Department of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the trial court.

[31] Affirmed.

May, J., and Brown, J., concur.