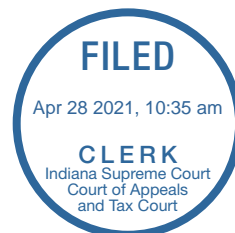


MEMORANDUM DECISION

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

In the Matter of the Involuntary
Termination of the Parent-Child
Relationship of: J.P. (Minor
Child),
and

S.H. (Father),
Appellant-Respondent,

v.

The Indiana Department of
Child Services,
Appellee-Petitioner.

April 28, 2021

Court of Appeals Case No.
20A-JT-2093

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-1911-JT-1809

Tavitas, Judge.

Case Summary

- [1] S.H. (“Father”) appeals the termination of his parental rights to J.P. (“Child”). Father challenges the trial court’s admission of records from the CHINS proceeding and the sufficiency of the evidence to support the termination of his parental rights. We conclude that the trial court properly took judicial notice of the documents and that the Hamilton County Department of Child Services (“DCS”) presented sufficient evidence to support the termination of Father’s parental rights. Accordingly, we affirm.

Issues

- [2] Father raises two issues, which we restate as:
- I. Whether the trial court abused its discretion by taking judicial notice of the records from the CHINS proceeding.
 - II. Whether DCS presented sufficient evidence to support the termination of Father’s parental rights.

Facts

- [3] The Child was born in December 2017 to Jo.P. (“Mother”) and Father.¹ On March 7, 2018, DCS removed the Child from Mother’s care due to Mother’s

¹ A DNA test establishing that Father is the Child’s biological father was not performed until August 2020.

use of methamphetamine and other illegal drugs while parenting the Child.² At the time, Father was incarcerated. Father was released from incarceration in May 2018.

[4] The trial court adjudicated the Child a child in need of services (“CHINS”) on June 29, 2018. A dispositional decree entered on July 13, 2018, ordered Father, in part, to: (1) maintain contact with the family case manager (“FCM”) and notify the FCM of changes in address; (2) maintain suitable housing and a stable source of income; (3) establish paternity; (4) refrain from consuming illegal controlled substances; (5) obey the law; (6) complete a parenting assessment and successfully complete all recommendations; (7) complete a substance abuse assessment and follow all recommended treatments; (8) submit to random drug screens; (9) attend all scheduled visitations with the Child; and (10) participate in fatherhood engagement services.

[5] Mother died of a drug overdose during the CHINS proceedings, and Father has admittedly struggled with a heroin addiction for at least “five or six” years. Tr. Vol. II p. 82. During the proceedings, Father failed to participate in services, tested positive for heroin, visited with the Child one time in 2018, and failed to maintain contact with DCS. Father moved to Kentucky without informing DCS and later requested that services be provided to him in Kentucky. The trial court denied the request because Father had failed to participate in services

² Mother’s other child, A.W., is not a subject of this appeal.

in Indiana and because Father moved without providing notice to DCS or to the trial court.

[6] In November 2019, DCS filed a petition to terminate Father’s parental rights. Father failed to appear for the initial hearing after he was served by publication. Father appeared at the fact-finding hearing on the petition for termination of Father’s parental rights on September 18, 2020. At the time of the hearing, Father testified that he had voluntarily participated in substance abuse treatment, was employed, and was living with his grandparents in Kentucky. At the hearing, DCS requested that the trial court “take judicial notice of the CHINS proceeding . . .” and sought to admit Petitioner’s Exhibit 1, which included the chronological case summary for the CHINS proceeding and the trial court’s orders associated with the CHINS proceeding. Tr. Vol. II p. 43. Father objected to the trial court “taking notice substantively of the findings within the orders as beyond the scope of Rule 201.” *Id.* The trial court admitted Petitioner’s Exhibit 1 and stated that it would “take judicial notice of its orders and in addition to that its findings.” *Id.* After the hearing, the trial court issued findings of fact and conclusions thereon terminating Father’s parental rights to the Child. Father now appeals.

Analysis

I. Judicial Notice

[7] Father first argues that the trial court abused its discretion by taking judicial notice of the orders in the CHINS proceeding. We review a trial court’s

decision to take judicial notice of a matter, like other evidentiary decisions, for an abuse of discretion. *Horton v. State*, 51 N.E.3d 1154, 1157 (Ind. 2016). “An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before it.” *Sims v. Pappas*, 73 N.E.3d 700, 705 (Ind. 2017).

[8] The documents at issue here were admitted as Petitioner’s Exhibit 1, which included the chronological case summary for the CHINS proceeding and the trial court’s orders associated with the CHINS proceeding. Indiana Evidence Rule 201(A) provides that: “The court may judicially notice (1) a fact that . . . (B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Moreover, Indiana Evidence Rule 201(B) provides that: “A court may judicially notice a law, which includes: . . . (5) records of a court of this state” The documents in Petitioner’s Exhibit 1 included the records of a court of this State and also facts that could be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Accordingly, pursuant to Evidence Rule 201, the trial court was permitted to take judicial notice of these documents. *See, e.g., Horton*, 51 N.E.3d at 1160 (noting that courts are permitted to take judicial notice of the records of a court of this State).

[9] We note that Father’s reliance on *Matter of D.P.*, 72 N.E.3d 976, 983 (Ind. Ct. App. 2017), is misplaced. In *D.P.*, we held that a trial court could not take judicial notice of substantive facts contained in preliminary filings of a CHINS case. We noted, “if a trial court hearing a CHINS matter could simply rely

upon the facts alleged in such preliminary filings, it would seem to obviate the need for a fact-finding hearing.” *D.P.*, 72 N.E.3d at 983. Here, the trial court did not take judicial notice of substantive facts contained in preliminary filings; rather, the trial court properly took judicial notice of the CCS and its own orders. *D.P.* is inapplicable here. The trial court properly admitted Petitioner’s Exhibit 1.

II. Sufficiency of the Evidence

[10] 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 must 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.

[11] 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.³ Here, the 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.*

[12] 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:

³ 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.
- (b) If the court does not find that the allegations in the petition are true, the court shall dismiss the petition.

- (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.

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

[13] Father argues that the trial court's finding regarding whether 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 is clearly erroneous.⁴ "In determining whether 'the conditions that resulted in

⁴ 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

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 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.*

[14] Mother’s drug usage and Father’s incarceration⁵ initially led to the Child’s removal. During the CHINS proceedings, however, Father failed to participate in services, failed to maintain contact with DCS, and visited the Child only one time. Without informing DCS or the trial court, Father moved to Kentucky,

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.

⁵ Father has convictions for theft in 2019; possession of a narcotic drug in 2018; unlawful possession of a syringe in 2016; and possession of paraphernalia in 2016.

where he lived from March 2018 to May 2019. In March 2020, Father moved back to Kentucky, where he now lives with his grandparents.

[15] Father has a long-standing addiction to heroin. Although the Child was removed by DCS in March 2018, Father did not obtain treatment until the spring of 2020. At that time, Father obtained inpatient treatment at Valle Vista and was recommended for outpatient treatment at Spero Health. Father participated in the outpatient treatment from March 2020 to August 2020, and was prescribed Suboxone.⁶ Father was ultimately discharged from the program because he was a resident of Kentucky, and Indiana Medicaid would not fund the treatment. Father has been unable to obtain treatment in Kentucky to continue the Suboxone treatment. Father admitted at the fact-finding hearing that he had only one Suboxone pill left and that he still needed group treatment.

[16] Father argues that he has been sober for six months, that he is employed, and that he voluntarily participated in treatment. Although we applaud Father for his recent progress, the trial court, in its discretion, weighed Father's history more heavily than his recent efforts and progress. The trial court's finding regarding whether 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 is not clearly erroneous.

⁶ The FCM testified that Suboxone is used to treat an opioid addiction and "curb . . . cravings" for heroin. Tr. Vol. II p. 71.

Conclusion

[17] The trial court did not err by taking judicial notice of the CHINS CCS and court orders, and sufficient evidence supports the termination of Father's parental rights to the Child. Accordingly, we affirm.

[18] Affirmed.

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