

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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In re: the Involuntary  
Termination of the Parent Child  
Relationship of:

K.P. (Minor Child),

and

C.P. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

October 26, 2023

Court of Appeals Case No.  
23A-JT-1170

Appeal from the Marion Superior  
Court

The Honorable Geoffrey A.  
Gaither, Judge

The Honorable Scott Stowers,  
Magistrate

Trial Court Cause No.  
49D09-02012-JT-844

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*Appellee-Petitioner,*  
and  
Kids' Voice of Indiana,  
*Appellee-Guardian Ad Litem*

**Memorandum Decision by Judge May**  
Judges Bailey and Felix concur.

**May, Judge.**

- [1] C.P. (“Father”) appeals the involuntary termination of his parental rights to his child, K.P. (“Child”). He argues the trial court’s findings do not support its conclusion that the conditions under which Child was removed from Father’s care would not be remedied. We affirm.

## Facts and Procedural History

- [2] On April 10, 2014, K.W. (“Mother”)<sup>1</sup> gave birth to Child. On February 8, 2016, the Department of Child Services (“DCS”) filed a petition to declare Child a Child in Need of Services (“CHINS”) based on Mother’s drug use, her

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<sup>1</sup> Mother consented to Child’s adoption.

flight during the DCS investigation, and Father's inability to care for Child because he was incarcerated.<sup>2</sup> Child was placed in relative care.

[3] On June 6, 2016, Father waived his right to a CHINS fact-finding hearing. The same day, Mother admitted Child was a CHINS and the trial court adjudicated Child as such. On June 27, 2015, the trial court entered a dispositional order that required Father to submit to random drug screens and to successfully complete a father engagement program. On August 10, 2016, a criminal court revoked the probation Father was serving for a 2015 conviction of Level 6 felony domestic battery in the presence of a minor.<sup>3</sup> After a review hearing on September 12, 2016, at which Father did not appear, the trial court found his counsel was unable to contact him and Father was not participating in services. After a review hearing on January 30, 2017, at which Father again did not appear, the trial court found Father told his counsel "that he had not been screening and had not engaged in parenting time." (Ex. Vol. I at 73.) The trial court additionally found Father had not been participating in services.

[4] On September 13, 2017, Father filed a motion for temporary in-home placement of Child with him. On October 16, 2017, the trial court held a hearing on Father's motion and issued an order wherein it concluded it would not be in Child's best interests to be placed with Father because Father had

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<sup>2</sup> It is unclear from the record why Father was incarcerated or when he was released from incarceration.

<sup>3</sup> Ind. Code § 35-42-2-1.3(a).

displayed “concerning” and “aggressive” behavior in the past. (*Id.* at 87.) Father had a past domestic violence conviction and a protective order had been filed against Father for the protection of Child. Based thereon, the trial court ordered Father to complete a “personality disorder evaluation” to address his anger issues and determine the cause thereof. (*Id.*) Finally, the trial court noted:

[Father] abruptly exited the courtroom after the court’s ruling, prior to the conclusion of the hearing. The Court further notes that a loud noise was heard in the courtroom immediately following [Father’s] departure. Upon inquiring on the record, court staff advised that [Father] broke the water fountain on his way out of the building.

(*Id.*)

[5] On December 4, 2017, the trial court held a permanency hearing and in its order issued the same day, it noted that Father had been compliant with drug screens, all of which had negative results. In the same order, the trial court granted the Guardian ad Litem’s (“GAL”) request that Father undergo a full psychological examination. On December 20, 2017, the State charged Father with one count of Level 5 felony intimidation where the victim is a judge or bailiff<sup>4</sup> and three counts of Level 6 felony intimidation where the threat is to commit a forcible felony<sup>5</sup> (“2017 Case”). In its order on March 27, 2018, the

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<sup>4</sup> Ind. Code § 35-45-2-1(b)(2).

<sup>5</sup> Ind. Code § 35-45-2-1(b)(1).

trial court found Father had yet to complete the full psychological examination as ordered.

[6] On September 18, 2018, the trial court held a hearing regarding Child's permanency and issued an order the same day. Therein, the trial court found Father was employed and could provide for Child but he had pending criminal cases. Child's permanency plan remained reunification. On September 18, 2018, the GAL filed a motion to amend Father's dispositional decree. On September 20, 2018, the criminal court revoked Father's bond<sup>6</sup> in the 2017 Case and ordered him held in custody until trial.

[7] On December 18, 2018, the criminal court in the 2017 Case released Father from custody, placed him on home detention, and reinstated his bond. On January 11, 2019, the trial court held a hearing on the GAL's motion to amend Father's dispositional decree. In its order the same day, the trial court ordered Father's dispositional decree amended to include a substance abuse assessment and domestic violence services, and the trial court found Father had been compliant with services. However, DCS requested, before any modification of services, that Father continue progress, noting Father had recently been released from incarceration. The trial court granted a portion of the GAL's request and ordered Father to complete a domestic violence evaluation. On February 18, 2020, the criminal court again ordered Father into custody

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<sup>6</sup> It is unclear from the record why Father's bond was revoked.

following a violation of the terms of his community corrections placement pending trial in the 2017 Case. On June 1, 2019, Father was arrested and charged with Level 6 felony resisting law enforcement while drawing or using a deadly weapon.<sup>7</sup> On June 20, 2019, Father pled guilty to that charge and received a suspended sentence of 365 days.

[8] The trial court held a periodic review hearing on July 12, 2019. In its order the same day, the trial court noted Father was being held in the Hamilton County jail.<sup>8</sup> On September 27, 2019, the trial court held a hearing regarding Child’s permanency plan. In its order issued the same day, the trial court noted Father was still incarcerated. As of that order, Child was in kinship placement with J.S., Father’s “Ex-Paramour[,]” where Child remained throughout the rest of the proceedings. (*Id.* at 129.) On March 13, 2020, the trial court held a hearing regarding Child’s permanency. In its order, it noted Father was incarcerated and had not had contact with his counsel. The trial court ordered Child’s permanency plan changed to guardianship by J.S.

[9] On June 12, 2020, the trial court held a periodic review hearing. In its order issued the same day, the trial court found Father had been released from incarceration and had “requested parenting time with [Child,]” which the trial court ordered to occur. (*Id.* at 139.) Child remained in J.S.’s care and the

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<sup>7</sup> Ind. Code § 35-44.1-3-1(c)(1).

<sup>8</sup> It is unclear why Father was being held in jail, what charges may have resulted, or when he was released.

reunification plan remained guardianship by J.S. On August 26, 2020, Father pled guilty to the 2017 Case and was sentenced to four years incarcerated in the Indiana Department of Correction, with two years suspended and one year on probation. In its permanency order on November 13, 2020, the trial court granted J.S.'s request to change Child's permanency plan from guardianship to adoption by J.S.

[10] Based on Father's non-compliance with services and his repeated incarceration, DCS filed a petition to involuntarily terminate his parental rights to Child on December 3, 2020. As of the trial court's February 19, 2021, order, Father was incarcerated and non-compliant with services. Father was incarcerated at the time of the trial court's May 17, 2021, order. However, in the trial court's November 5, 2021, order, the trial court noted that while Father was not incarcerated at the time and he was participating in parenting time with Child, Father was not engaged in services. As of the trial court's order on April 22, 2022, Father was again incarcerated.<sup>9</sup> On October 1, 2022, Father was arrested and charged with Level 6 felony possession of methamphetamine,<sup>10</sup> Class A misdemeanor driving while suspended,<sup>11</sup> Class B misdemeanor possession of marijuana,<sup>12</sup> and two traffic infractions.

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<sup>9</sup> It is unclear from the record why Father was incarcerated or when he was released from incarceration.

<sup>10</sup> Ind. Code § 35-48-4-6.1(a).

<sup>11</sup> Ind. Code § 9-24-19-2.

<sup>12</sup> Ind. Code § 35-48-4-11(a).

[11] On March 30, 2023, the trial court held a fact-finding hearing on DCS’s petition to terminate Father’s parental rights. Father appeared briefly during the hearing and “demonstrated bizarre behaviors such has [sic] requesting to leave; refusing to answer basic questions; and falsely claiming to [be] unable to speak English.” (App. Vol. II at 24.) On April 26, 2023, the trial court issued its order terminating Father’s parental rights to Child.

## Discussion and Decision

[12] We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge the credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, 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 a 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, cert. denied* 534 U.S. 1161 (2002).

[13] “The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A juvenile court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *In re K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated



solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[14] To terminate a parent-child relationship in Indiana, DCS must allege and prove:

- (A) that one (1) of the following is true:
  - (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
  - (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
  - (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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 provide clear and convincing proof of these allegations at the termination hearing. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh'g denied*. “[I]f the State fails to prove any one of these statutory elements, then it is not entitled to a judgment terminating parental rights.” *Id.* at 1261. Because parents have a constitutionally protected right to establish a home and raise their children, the State “must strictly comply” with the statutory requirements for terminating parental rights. *Platz v. Elkhart Cnty. Dep’t of Pub. Welfare*, 631 N.E.2d 16, 18 (Ind. Ct. App. 1994).

[15] When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine whether the evidence supports the findings and 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.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208. Unchallenged findings are accepted as correct. *Madlem v. Arko*, 592 N.E.2d 686, 687 (Ind. 1992).

[16] Father argues the trial court’s findings do not support its conclusion that there existed a reasonable probability that the conditions under which Child was removed from Father’s care would not be remedied. The trial court must judge a parent’s fitness to care for a child at the time of the termination hearing. *In re A.B.*, 924 N.E.2d 666, 670 (Ind. Ct. App. 2010). Evidence of a parent’s pattern of unwillingness or lack of commitment to address parenting issues and to

cooperate with services “demonstrates the requisite reasonable probability” that conditions will not change. *Lang v. Starke Cnty. OFC*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Father does not challenge the trial court’s findings, and thus we accept them as correct. *See Madlem*, 592 N.E.2d at 687 (“Because Madlem does not challenge the findings of the trial court, they must be accepted as correct.”).

[17] The trial court made several findings relevant to its conclusion that the conditions under which Child was removed from Father’s care would not be remedied:

4. A Child in Need of Services (“CHINS”) Petition was filed on [Child] on February 8, 2016 . . . following allegations that [Child’s] parents had failed to provide her with a safe, stable living environment free for [sic] illegal drug use and with proper supervision. The Petition also alleged that [Father] was incarcerated and unable to care for [Child] and unable to protect [Child] while in [Mother’s] custody.

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7. On June 27, 2016, the CHINS Court proceeded to disposition. [Father] was ordered to participate in random drug/alcohol screens and to participate in Father Engagement. [Child] remained removed from [Father’s] care pursuant to Dispositional Decree. On January 11, 2019, the Dispositional Decree was modified, and [Father] was ordered to complete a Domestic Violence Evaluation.

8. [Father] is currently incarcerated in the Indiana Department of Correction, Putnamville Facility.

\* \* \* \* \*

10. [Father] was incarcerated on and off throughout the duration of the CHINS case for a total of approximately four (4) years.

11. In the Summer of 2022, [Father] was not incarcerated. He informed [Family Case Manager (“FCM”) Gracelynn] Williams that he wanted nothing to do with DCS and asked the FCM not to contact him anymore.

12. [J.S.] is [Father’s] former paramour.

13. [J.S.] observed [Father] abuse alcohol and marijuana.

14. [Father] committed acts of domestic violence on [J.S.] in the presence of [Child] and [J.S.’s] other children.

15. On one occasion, [Father] was left to supervise [Child] and other children. When [J.S.] returned home, [Father] was intoxicated and passed out. He then pushed and kicked [J.S.] and fled in her vehicle and later wrecked it.

16. Following a court hearing on October 16, 2017, after the CHINS court declined to place [Child] with him, [Father] angrily left the courtroom and damaged a water fountain in the court building.

17. [Father] has demonstrated erratic behaviors towards [J.S.]. He has conveyed death threats to her and in one 24 hour period he sent 1,284 text messages to her.

18. [J.S.] terminated the relationship with [Father] in late 2017 or early 2018.

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21. [Father] has had minimal parenting time with [Child] and has not seen [Child] since December 2021.
22. [Father] has not submitted a drug screen since 2018.
23. [Father] has not completed Fatherhood Engagement despite receiving multiple referrals.
24. [Father] has conveyed threats to his previous FCM; his Father Engagement provider; and to a previous Magistrate who presided over his CHINS case.
25. [Father] has not completed a domestic violence evaluation despite receiving six (6) referrals.
26. [Father] has a lengthy criminal history including convictions for Domestic Battery in the Presence of a Child (F6) . . . Intimidation (F5, 1 count and F6, 3 counts) . . . [and] Resisting Law Enforcement, Using Deadly Weapon (F6). He is [sic] pending additional criminal charges[.]

(App. Vol. II at 23-4.) Based thereon, the trial court concluded:

There is a reasonable probability that the conditions that resulted in [Child's] removal and continued placement outside of the home will not be remedied by [Father]. [Father] has had well over seven (7) years to put forth an effort and had [sic] not done so. He has not completed any services despite multiple referrals. His behavior caused himself [sic] to be absent from [Child's] life for months at a time. He has refused to participate in services and instructed the DCS FCM that he did not want to be contacted any longer.

(*Id.* at 24-5.) Father contends the findings do not support the trial court’s conclusion because, at the time of Child’s removal, he had not been ordered to participate in services<sup>13</sup> and visitation and thus his failure to comply with the terms of the trial court’s dispositional order could not be later used to support the termination of his parental rights.<sup>14</sup>

[18] Father’s argument ignores what is implied in the trial court’s findings – Father was incarcerated at the time of Child’s removal and he again was incarcerated at the time of the termination fact-finding hearing. As we stated recently in *C.S.*, when reviewing whether the trial court’s findings supported its conclusion that the conditions under which a child was removed from a parent’s care would not be remedied, we consider the “initial reasons for removal, but also the reasons for continued placement outside the home.” 190 N.E.3d 434, 438 (Ind. Ct. App. 2022). We then determine if those conditions still exist,

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<sup>13</sup> Father contends his failure to engage in services or visitation was “a result of Father’s involuntary incarceration and the neglect of the DCS and the GAL s [sic] to interact with him.” (Father’s Br. at 10.) As to his complaint that DCS or GALs were the reason he did not complete services, Father may not “sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting.” *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Further, to the extent he argues the termination of his parental rights to Child should be reversed due to lack of services, we note “failure to provide services does not serve as a basis on which to directly attack a termination order as contrary to law.” *In re H.L.*, 915 N.E.2d 145, 148 n.3 (Ind. Ct. App. 2009).

<sup>14</sup> Father also argues the trial court’s consideration of his failure to complete services and visit with Child violated his due process rights because the trial court “altered the statute to make termination of parental rights automatic and deprived [Father] of a meaningful opportunity to contest the termination.” (Father’s Br. at 11) (original formatting omitted). As we explained in our analysis of the trial court’s findings as related to its conclusion that the conditions under which the Child was removed would not be remedied, the trial court is required to consider not only the conditions existing at the time of Child’s removal, but also the conditions that existed throughout the pendency of the case, noting any changes thereto to support or counter DCS’s petition to terminate Father’s parental rights to Child. Thus, Father’s argument fails. *See, e.g., In the Termination of the Parent-Child Relationship of B.A.*, 23A-JT-561, slip op. at 5 n.2 (Ind. Ct. App. August 30, 2023) (rejecting same argument).

“balancing recent improvement against habitual patterns of conduct.” *Id.* As stated in the Facts, Child was removed from Father’s care because he could not take custody of Child due to his incarceration. Father was incarcerated for the majority of the time this case was pending. Father did not engage in services as ordered and visited with Child sporadically. Because he did not complete the ordered services, Father was in no better position to parent Child than he was at the time of her removal seven years earlier. Based thereon, we conclude the trial court’s findings supported its conclusion that the conditions under which Child was removed from Father’s care would not be remedied.<sup>15</sup> *See In re D.J.*, 755 N.E.2d 679, 685 (Ind. Ct. App. 2001) (mother’s pattern of behavior during the CHINS and termination proceedings supported the trial court’s conclusion that the conditions under which her children were removed from her care would not be remedied), *reh’g denied, trans. denied.*

## Conclusion

[19] The trial court’s findings support its conclusion that the conditions under which Child was removed from Father’s care would not be remedied. Accordingly, we affirm the involuntary termination of Father’s parental rights.

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<sup>15</sup> Father also argues the trial court’s findings do not support its conclusion that the continuation of the Father-Child relationship poses a threat to Child’s well-being. As the relevant statute is written in the disjunctive, DCS is required to prove only one of the three parts of Indiana Code section 31-35-2-4(b)(2)(B). *See, e.g., In re B.J.*, 879 N.E.2d 7, 20 (Ind. Ct. App. 2008) (Indiana Code section 31-35-2-4(b)(2)(A) is written in the disjunctive and thus DCS need only prove one of the enumerated elements therein), *trans. denied.* Accordingly, we need not address this argument to affirm the trial court’s judgment.

[20] Affirmed.

Bailey, J., and Felix, J., concur.