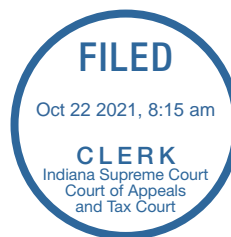


MEMORANDUM DECISION

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 Termination
of the Parent-Child Relationship
of: R.N., Jr. (Minor Child),

R.N., Sr. (Father), and
R.S. (Mother),

Appellants-Respondents,

v.

Indiana Department of
Child Services,

Appellee-Petitioner.

October 22, 2021

Court of Appeals Case No.
21A-JT-940

Appeal from the Delaware Circuit
Court

The Honorable Kimberly S.
Dowling, Judge

The Honorable Amanda L.
Yonally, Magistrate

Trial Court Cause No.
18C02-2009-JT-84

Weissmann, Judge.

[1] R.N. (Father) and R.S. (Mother) appeal the termination of their parental rights as to their two-year-old child, R.N., Jr. (Child). Finding that the trial court correctly concluded Father and Mother (collectively, Parents) lacked necessary parenting skills and could not provide the safe home environment Child needed, we affirm.

Facts

[2] Child was born in December 2018 with significant health problems. Three weeks after his birth, DCS removed Child from Parents' home based on housing and feeding concerns. At the time, Child had a gastric tube for feeding, and Parents reportedly were orally feeding the newborn foods such as scalloped potatoes and Gatorade. Accordingly, DCS filed a petition alleging Child to be a child in need of services (CHINS).

[3] Parents admitted that Child was a CHINS because Child's physical or mental condition was seriously impaired or endangered as a result of an inability, refusal, or neglect to supply him with necessary supervision, food, clothing, shelter, or medical care. They further stipulated that Child needed care, treatment, or rehabilitation that he was not receiving and was unlikely to be provided. Parents specifically admitted that Child has extensive medical needs and that Parents needed continued services and education regarding those needs before they could be reunited with Child. Based on those stipulations, the trial court found Child to be a CHINS in February 2019.

[4] One month later, the trial court entered a dispositional order requiring Parents

to, among other things:

- Maintain suitable, safe, and stable housing.
- Secure and maintain a legal and stable source of income.
- Ensure Child is properly clothed, fed, and supervised.
- Meet all medical and mental health needs of Child in a timely and complete manner.
- Provide Child with a safe, secure, and nurturing environment free from abuse and neglect.
- Participate in homebased counseling as recommended by the provider and DCS.

[5] Child was placed in Parents' home on a trial basis. The trial home placement ended two months later when Child, while being held by Mother, was hit by a car seat thrown by Mother's roommate during an argument. During Child's treatment for head bruising from that incident, health care providers discovered an older rib fracture that Parents could not explain. Child was placed in foster care, where he remains.

[6] For the next 1 ½ years, Parents largely failed to comply with the trial court's orders. They moved repeatedly, often to homes inappropriate for a child, and occasionally were homeless. Father, who received disability payments, also worked part-time as a self-employed mechanic but did not want to report his income. Moreover, Parents failed to satisfactorily complete most court-ordered services. Their visits with Child also revealed gaps in their parenting abilities, including Father's routine inattention and Mother's failure to understand the

child's food needs. Ultimately, these visits were reduced substantially due to Parents' repeated cancellations.

- [7] In December 2020, DCS filed a petition to terminate the parental rights of both Father and Mother. After hearing evidence, the trial court determined that Child had been removed from Parents under a dispositional decree for at least 6 months and had been under DCS's supervision for at least 15 of the most recent 22 months at the time the petition to terminate was filed. The trial court also found a reasonable probability that the conditions that resulted in Child's removal and continued placement outside Parents' home will not be remedied. The court further ruled that termination of Father's and Mother's parental rights was in the best interest of Child and that DCS had a satisfactory plan—adoption—for Child. Parents separately appealed, but we granted their request to consolidate the appeals.

Discussion and Decision

- [8] In their joint brief, Parents contend the trial court violated their rights under the First, Ninth, and Fourteenth Amendments to the United States Constitution. However, they fail to develop any constitutional argument and, therefore, have waived any constitutional claims. *See Davenport v. State*, 734 N.E.2d 622, 623 (Ind. Ct. App. 2000); *see also* Ind. Appellate Rule 46(A)(8)(a) (appellant's argument "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning"). The remainder of Parents' arguments, which we will address, focus on the alleged insufficiency of the

evidence supporting the trial court's termination of their parental rights. Finding clear and convincing evidence supports that judgment, we affirm.

I. Standard of Review

[9] Termination of parental rights is appropriate when DCS alleges and proves by clear and convincing evidence:

(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 wellbeing 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). When DCS meets this burden of proof, the trial court is required to grant the petition to terminate parental rights. Ind. Code § 31-35-2-8; Ind. Code § 31-37-14-2.

[10] We normally apply a two-tiered standard of review to a trial court's termination of parental rights. However, as Parents do not claim the evidence does not support the findings, we need only determine whether the findings support the

judgment. *See In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). In making this determination, we do not reweigh evidence or judge witness credibility and will set aside the judgment only if it is clearly erroneous. *Id.*

II. Remediating of Conditions

[11] Parents challenge only one of the trial court's conclusions under Indiana Code § 31-35-2-4(b)(2).¹ They claim clear and convincing evidence does not support the trial court's determination that a reasonable probability that the conditions resulting in Child's removal or the reasons for placement outside Parents' home will not be remedied.

[12] When reviewing such a claim, we first must identify which conditions led to removal and then determine whether clear and convincing evidence establishes a reasonable probability that those conditions will not be remedied. *K.E. v. Ind. Dep't of Child Servs.*, 39 N.E.3d 641, 647 (Ind. 2015). The latter determination requires consideration of Parents' fitness at the time of the termination hearing, with evidence of any changed conditions taken into account. *Id.* Habitual patterns, such as criminal history and neglect, are balanced against any changed conditions. *See In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014).

[13] Parents contend they have remedied their housing issues and that their medical neglect is no longer a threat because Child's feeding tube has been removed.

¹ Parents also argue the evidence does not support the trial court's conclusion that continuation of the parent-child relationships posed a threat to Child. However, the trial court made no such conclusion.

Much of their argument, however, amounts to excuses for Parents' various failings throughout the CHINS case. Thus, they improperly invite us to reweigh the evidence, a task we will not perform on appeal. *See R.S.*, 56 N.E.3d at 628.

- [14] The unchallenged findings support the challenged conclusion. The trial court found Child initially was removed due to allegations of medical neglect and inappropriate housing. App. Vol. II, p. 105. When Child temporarily returned to Parents' home, Child suffered two separate injuries, one of which Parents alarmingly never explained. *Id.* at 107.
- [15] The trial court also found Parents never had stable housing during the CHINS and termination proceedings. *Id.* at 107, 109. Parents moved 10 to 15 times, including 4 times during the 2 months of the trial home placement. *Id.* at 105, 109. Occasionally homeless, Parents also had lived at motels and a taxi company. *Id.* at 109. Only two of Parents' homes during that approximate two-year period were appropriate for Child. *Id.*
- [16] The trial court further found that during visitations, Father was distracted and often on his phone or outside the visitation room. *Id.* at 107-08. Mother was engaged with Child during visitations but displayed a lack of parenting skills, including knowing when and what to feed Child. *Id.* at 108. Mother did not complete homebased counseling or casework and only sporadically participated in therapy. *Id.* at 107-08. Father, who suffered from posttraumatic stress disorder as a result of an accident, completed therapy but made no progress

toward meeting therapeutic goals. *Id.* at 108. Father was also “aggressive” and “threatening” to service providers. *Id.* at 109.

[17] These findings adequately support the trial court’s conclusion that Parents were unlikely to remedy the conditions that prompted Child’s removal and continued placement outside Parents’ home. Parents lacked the skills needed to parent Child and failed to avail themselves of opportunities to gain those skills. Even when they engaged in services, they exhibited little benefit. Parents’ abilities and circumstances largely did not change from the date of removal until the date of termination of their parental rights. These habitual patterns justified termination of their parental rights. *See In re A.K.*, 924 N.E.2d 212, 221 (Ind. Ct. App. 2010), *trans. denied* (holding parent’s historical inability to provide housing, stability, and supervision coupled with a current inability to do so supports termination of parental rights).

[18] The judgment terminating the parental rights of Father and Mother is affirmed.

Mathias, J., and Tavitas, J., concur.