

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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In the Termination of the Parent-  
Child Relationship of E. W.

D.T. (Father),

*Appellant-Respondent,*

v.

Indiana Department of  
Child Services,

*Appellee-Petitioner*

August 23, 2023

Court of Appeals Case No.  
23A-JT-789

Appeal from the Morgan Circuit  
Court

The Honorable G. Thomas Gray,  
Senior Judge

Trial Court Cause No.  
55C01-2209-JT-340

**Memorandum Decision by Judge Weissmann**  
Judges Riley and Bradford concur.

## **Weissmann, Judge.**

- [1] D.T. (Father) lost his parental rights over E.W. (Child) after failing to complete a court-ordered reunification plan. Father repeatedly failed to spend time with Child, failed to maintain employment or suitable housing, and used illegal substances. Father now appeals, arguing procedural irregularities denied him due process and that the Indiana Department of Child Services (DCS) presented insufficient evidence to support the termination of his parental rights. Finding neither a due process violation nor insufficient evidence, we affirm.

## **Facts**

- [2] Child was born in Indiana in 2016. Father learned within the year that he was likely Child's father. For the next couple of years, Father saw and cared for Child semi-regularly. But when Child was 3 years old, DCS became aware that Mother had left Child with caregivers in Indiana and travelled to Michigan. When contacted by DCS, Mother advised that she had no plans to return to Child or to Indiana. She reported that Father was living in Michigan, but she did not have his contact information. DCS soon detained Child after learning one of his caregivers tested positive for methamphetamine and the other had an active arrest warrant. In response, DCS petitioned to find Child to be a child in need of services (CHINS). Child would later be diagnosed as autistic.
- [3] DCS located Father in Michigan and successfully served him with the CHINS petition and a summons for the initial hearing. Yet Father did not appear at that hearing. Child was adjudicated a CHINS based on Mother's admission that she

could not care for Child. Father also did not appear for the dispositional hearing.

[4] Mother consented to Child's adoption in June 2021. The next month, Father appeared virtually at a continued initial hearing where, for the first time, he denied the CHINS allegations. After he later admitted that Child is a CHINS, the trial court ordered Father to complete reunification services, including a parenting assessment, a substance use assessment, random drug screens, and supervised visitations. At that hearing, Father admitted that he had no stable housing and no income.

[5] Father moved to Indiana the next month. While in Indiana, Father participated in the reunification process. A caseworker worked with Father on addiction issues, housing stability, transportation, employment, finances, and creating a bond with Child. The caseworker, however, noticed that Father struggled at some of the supervised visits with learning Child's attention limitations. The substance abuse screens and drug tests revealed that Father used illegal drugs, including methamphetamine and marijuana. Father did not hide these facts and indicated that he had no intention of stopping. Father threatened to return to Michigan, where marijuana is ostensibly legal. Father did stop using methamphetamine, however.

[6] Father eventually moved back to Michigan, after which things went downhill. Although Father continued to meet with caseworkers virtually, he struggled to obtain employment and his communication with DCS quickly deteriorated. By

the summer of 2022, Father had lost contact with DCS and was out of compliance with his reunification plan. Accordingly, DCS moved to terminate Father's parental rights. After a hearing in October 2022, the trial court approved a permanency plan of reunification with a concurrent plan of adoption for Child.

- [7] In the spring of 2023, the trial court terminated Father's parental rights. The trial court found that, since the reunification plan went into effect, Father continued to be unable to care for Child due to a lack of stable housing or income; Father repeatedly and defiantly continued to use illegal substances; and Father had not shown an ability to support Child nor meet the mental health and supervisory needs Child's autism requires. The trial court concluded that termination is in Child's best interest and that adoption by the current foster parents was a satisfactory plan for Child's care and treatment.

## **Discussion and Decision**

- [8] Father makes two arguments on appeal. First, he alleges that irregularities in the proceedings denied him due process. And second, he argues that insufficient evidence supports the termination of his parental rights. We address each in turn.

### **I. Due Process**

- [9] "Due process protections bar 'state action that deprives a person of life, liberty, or property without a fair proceeding.'" *In re G.P.*, 4 N.E.3d 1158, 1165 (Ind. 2014) (quoting *In re C.G.*, 954 N.E.2d 910, 916 (Ind. 2011)). Given the

fundamental importance of the parent-child relationship, “due process protections at all stages of CHINS proceedings are vital because every CHINS proceeding has the potential to interfere with the rights of parents in the upbringing of their children.” *In re G.P.*, 4 N.E.3d at 1165 (internal quotations omitted).

[10] To determine whether a parent’s due process rights have been violated, we balance the three factors laid out by the United States Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). As described by the Indiana Supreme Court, those factors require courts to consider: “(1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure.” *In re K.D.*, 962 N.E.2d 1249, 1257 (Ind. 2012). Father alleges that DCS failed to locate and notify him prior to endorsing a concurrent plan of adoption for Child. The record belies this argument.

[11] When DCS learned Child had been left with unsuitable caregivers, it reasonably attempted to notify Father—then living out of state and out of contact with Child—of the proceedings. Father does not contend that DCS failed to notify him of any proceedings. Indeed, despite Father’s absence at several hearings and appointments, both the trial court and DCS continued to afford Father opportunities to participate in the proceedings and reunify with Child. App. Vol. II, p. 36 (ordering that despite Father “not compl[ying]” with Child’s case plan, continued attempts at reunification should still be made). Father’s belief

that DCS “had already made decisions to adopt a concurrent plan of adoption” for Child before contacting him is similarly without merit. Appellant’s Br., p. 11. The record establishes that the first time Child’s permanency plan added a concurrent plan of adoption was March 2021. Exhs., p. 56. Yet DCS had served Father with notice of the initial CHINS petition over a year earlier, in January 2020. *Id.* at 40-41.

[12] We similarly reject Father’s contention that DCS was to blame when the supervised virtual visits between Father and Child went poorly, through both technical difficulties and his personal difficulties bonding with Child during these visits. Father alone bears the consequences of his decision to live outside of Indiana away from Child. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000) (“[A] parent 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.”).

[13] Considering the State, by all accounts, followed the proper procedural safeguards, we find no violation of Father’s due process rights in these proceedings.

## **II. Termination of Parental Rights**

[14] Just as care must be taken to ensure that parents’ due process rights are protected, the State must meet a high bar to terminate their parental rights. Essentially, the State may terminate parental rights only by proving that the

parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008).

[15] A petition to terminate parental rights must allege, in relevant 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.

(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). If the trial court finds these allegations are true by clear and convincing evidence, it must terminate the parent-child relationship.

Ind. Code §§ 31-35-2-8, -37-14-2.

[16] Father challenges the trial court's determinations that there is a reasonable probability that the conditions resulting in Child's removal will not be remedied

and that termination is in Child’s best interests.<sup>1</sup> When reviewing a trial court’s decision to terminate parental rights, we do not reweigh evidence or judge witness credibility. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). The judgment will be set aside only if it is clearly erroneous. *Id.*

### ***Remedying Conditions***

[17] There is a reasonable probability that the conditions leading to Child’s removal will not be remedied. This determination requires a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). First, we identify the relevant conditions. *Id.* We consider not only the initial reasons for removal but also the reasons for continued placement away from Father. *See In re A.I.*, 825 N.E.2d 798, 807 (Ind. Ct. App. 2005). Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *In re E.M.*, 4 N.E.3d at 643. Given the trial court’s firsthand view of the situation, we entrust it with evaluating the “delicate balance” of a parent’s fitness at the time of termination, including the weight it assigns to recent improvements against habitual patterns of conduct. *Id.*

[18] DCS first became involved after learning Child had been abandoned by Mother and left with inadequate caregivers. Although it took several months to contact Father and for him to participate in the proceedings, Father at first tried to

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<sup>1</sup> Because Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, we need not consider the alternative prong, addressing the probability that the continued parent-child relationship poses a threat to Child’s well-being, as we find this point determinative. *Matter of J.S.*, 133 N.E.3d 707, 714 (Ind. Ct. App. 2019)



complete the ordered reunification services and to bond with Child. But these efforts did not last long and, by the end, became more cursory than not. Tr. Vol. II, p. 62. Father also continued his illegal drug use and made clear that he would not stop, regardless of the consequences. *Id.* at 97.

[19] The trial court did not clearly err in determining that there was a reasonable probability that the removal conditions would not be remedied. Father does not dispute any of the trial court’s findings or conclusions. Instead, he alleges that because he was not present when Child was removed from Mother’s care attributing any of these issues to him is “simpl[y] speculation.” Appellant’s Br., p. 13. But this argument fails to address that since entering these proceedings, Father has not shown an ability to reform as needed to care for Child. *See K.T.K. v. Ind. Dep’t of Child Servs.*, 989 N.E.2d 1225, 1233-34 (Ind. 2013) (finding no clear error where parent had made some steps towards rehabilitation but other evidence still supported termination).

### ***Best Interests***

[20] Lastly, Father contends that termination of his parental rights is not in Child’s best interests. We disagree. Courts “need not wait until a child is irreversibly harmed before terminating the parent-child relationship.” *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014). Father admits that Child is doing well in his current placement and that Father’s visits with Child did not always go well. While these are not determinative facts, we note that Father did not establish through the reunification process that he is committed to the best interests of Child. He moved out of the state—away from Child—for no reason related to

becoming a better caregiver for Child. Despite repeated efforts by DCS to assist him, at the time of the termination hearing, Father was unemployed. He has no identifiable source of income to support Child. Father is also currently residing with his mother, who has a history with DCS arising from child abuse and neglect. Thus, the trial court did not clearly err in determining that Father's home is unsuitable for Child. The case managers and court appointed specialists uniformly agreed that termination of Father's parental rights is in Child's best interests. We see no clear error in the trial court's determination.

## **Conclusion**

[21] The termination of Father's parental rights is affirmed. Father suffered no due process violation, and DCS presented sufficient evidence justifying termination.

Riley, J., and Bradford, J., concur.