

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.



ATTORNEYS FOR APPELLANTS

Miriam Huck
Columbus, Indiana

William E. Happel
Thomasson, Thomasson, Long &
Guthrie, P.C.
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Monika P. Talbot
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In re the Termination of the
Parent-Child Relationship of
I.T., E.T., L.T. (Minor Children)
and

J.T. (Father) and S.T. (Mother),
Appellant-Respondents,

v.

Indiana Department of Child
Services,
Appellee-Petitioner.

November 10, 2021

Court of Appeals Case No.
21A-JT-715

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

The Honorable Lindsey Holden-
Kay, Magistrate

Trial Court Cause Nos.
03C01-2007-JT-3547
03C01-2007-JT-3548
03C01-2007-JT-3550

Mathias, Judge.

- [1] J.T. (“Father”) and S.T. (“Mother”) appeal the Bartholomew Circuit Court’s order terminating their parental rights to their three minor children and argue that the termination order is not supported by clear and convincing evidence.
- [2] We affirm.

Facts and Procedural History

- [3] Father and Mother have three children: I.T., who was born in July 2012; E.T., who was born in November 2016; and L.T., who was born in September 2018.¹ In April 2017, DCS received a report that I.T. had significant bruising on his legs and buttocks. Family case manager Staci Downing interviewed Mother on April 12, 2017. During the interview, Mother disclosed that Father frequently disciplined I.T. with a belt, and Father admitted that he used his hand and belt to discipline I.T. Mother also disclosed that there were prior incidents of domestic violence between Father and Mother,² including while she was pregnant. Numerous protective orders have been issued against Father for Mother and the children.

¹ Mother also had a fourth child, R.A., who was born in January 2015. R.A. has been adjudicated a CHINS, but she is not a subject of these termination proceedings.

² An incident of domestic violence between Father and Mother resulted in a domestic battery conviction in 2010. Father admitted to the conviction but insisted that Mother was accidentally injured and he “never battered her.” Tr. Vol. II, p. 220.

- [4] A doctor at Riley Children’s Hospital concluded that the bruises on I.T.’s right leg and buttocks were consistent with physical abuse and not reasonable discipline. In August 2017, DCS filed a petition alleging that I.T. and E.T. were children in need of services (“CHINS”). They were allowed to remain in Mother’s care, but Father’s access to the children was restricted. Parents were ordered to participate in various services including therapy. Father was also ordered to participate in Fatherhood Engagement and visitation with the children.
- [5] In January 2018, clinical psychologist Linda McIntire completed a clinical interview with Father. Throughout the interview, Father refused to take responsibility for his actions and exhibited low empathy for others. Father’s history revealed sexually inappropriate behavior, issues with aggression and anger management, and cruelty toward animals. Dr. McIntire concluded that Father suffers from Anti-Social Personality Disorder and Paranoid Personality Disorder.
- [6] Mother began therapy with Charlotte Barton-Coombs in April 2018. During therapy, Mother stated that Father’s abuse of the children was consistent with normal discipline. Dr. Barton-Coombs attempted to educate Mother concerning the risks that Father’s behavior and abuse posed to the children. Mother believed that her role in the household was to do what she was told. Mother blamed her own behavior for Father’s abuse. Dr. Barton-Coombs also interviewed I.T., who told her that he was afraid of Father. Ultimately, Mother refused to heed warnings about the danger Father poses to Mother and the

children. Barton-Coombs opined that the children would not be safe in Mother's care if she was unable to accept that Father "is a risk to the safety and well being of his children." Tr. Vol. II, p. 103.

[7] Prior to the September 11, 2018 CHINS review hearing, Parents consistently participated in therapy and were committed to the case plan. Therefore, Father was allowed to return to the home for a trial home visit around the time of L.T.'s birth in September 2018. But the next month, DCS received a report concerning bruises on E.T. Father had spanked E.T. hard enough to leave bruises and punched E.T. in the eye. Father admitted that he hit E.T. in the eye, but claimed it was an accident. Father stated that he had spanked E.T. because she had removed her diaper. DCS also investigated additional allegations that Father had abused Mother. Specifically, Mother stated that Father had picked her up by her arms and threw her on the couch. Her arms were bruised from the incident. As a result of these allegations, the trial court terminated Father's trial home visit. But the children remained in Mother's care.

[8] DCS filed a petition alleging that L.T. was a CHINS due to domestic violence in the home. In November 2018, the State charged Father in the Decatur Circuit Court with two counts of Level 6 felony domestic battery and named

Mother as the victim of one count and E.T. as the victim in the other count.³

No-contact and protective orders were issued against Father as well.

[9] In March 2019, Mother and the children were living with maternal grandmother. Although Mother had stopped participating in therapy, she was benefiting from home-based casework and was employed. Father had not participated in batterer's intervention services and his visitation with the children was inconsistent. However, in May 2019, Father began to participate in individual therapy and made progress in therapy. But Father still could not empathize with his children and did not believe that they feared him. The therapist concluded that Father should not have any unsupervised parenting time with the children.

[10] L.T. was adjudicated a CHINS in June 2019.⁴ Because Mother continued to minimize the impact of Father's abusive behavior on the children and continued to allow prohibited contact between Father and the children, the children were removed from Mother's care in June 2019. In Summer 2019, I.T. was exhibiting behavioral issues. He was impulsive, left the house without permission, and engaged in destructive behavior. In August 2019, I.T. began therapy with Crysta Shiner. The trial court also suspended Father's visitation

³ Father pleaded guilty to the charges, and, after he successfully completed supervised probation, his felony convictions were converted to Class A misdemeanors.

⁴ Parents appealed the CHINS adjudication as to L.T. Our court affirmed the adjudication on April 23, 2020. See *S.T. v. Ind. Dep't of Child Servs.*, 145 N.E.3d 864 (Ind. Ct. App. 2020).

with the children and ordered that visitation would not resume until it was therapeutically appropriate for the children.

[11] The children were placed in the care of their maternal grandfather and his wife. During this time, Parents were living together. Mother continued to visit the children, but her relatives refused to continue to supervise the visitation after Mother struck their vehicle. Father was participating in batterer's intervention and therapy. Father was allowed to participate in visits with E.T. that were supervised by a therapist.

[12] Father's visitation with all children resumed in fall 2019. But Father was still unable to control his anger during visitation. The children continued to tell the visit supervisor that they feared Father. Mother struggled to supervise the children and keep them safe during visitation.

[13] In the dispositional order issued in October 2019, the trial court ordered Father to participate in batterer's intervention treatment, therapy, visitation, and home-based case management services. Mother was ordered to participate in therapy and visitation.

[14] During visitations with the children, Father did make progress because he learned to walk away from the children when he became upset. But Father refused to change his parenting methods, struggled to control his emotions, and shouted at visit supervisors and other DCS providers. The visit supervisor observed that I.T. was frightened of Father. Mother continued to rely on Father

to discipline the children and was often overwhelmed by the children during visits.

- [15] In March 2020, the children had been placed with their grandparents for approximately eight months and visitation had not progressed beyond supervised visitation. Parents were living together but they were evicted from their home. Father had completed the batterer's intervention program and Fatherhood Engagement but still struggled with appropriate parenting. During a supervised visit, Father called I.T. a foul name.
- [16] Sadly, I.T. continued to display aggressive and destructive behavior, which resulted in police intervention and a hospital stay in May 2020. I.T. was re-admitted to a psychiatric facility in October 2020 due to continued aggressive, destructive, and defiant behavior. After I.T. was released from the second hospital stay, he was placed in therapeutic foster care.
- [17] During a visitation in summer 2020, Father grabbed E.T. by her arm and yanked her over a baby gate. Father also smacked I.T.'s hand when he tickled his sister while the family was praying. Mother told the visitation supervisors that Father hit the children because he thought they were "demon possessed." Tr. Vol. II, pp. 195-96; Vol. III, p. 6; *see also* Vol. II, p. 79.
- [18] On July 27, 2020, DCS filed petitions to terminate Parents' rights to all three children. Parents were no longer living together in August 2020. Mother had a home, but Father was homeless. They continued to participate in supervised visitation with the children but did so separately. Father continued to

demonstrate aggressive behavior with the children but accepted redirection and apologized for his behavior. Father made inappropriate statements to I.T. concerning his foster family during a visitation in October 2020. Father told I.T. that he should not trust his foster family, that they lied to I.T., and were trying to take him away from his real family.

- [19] In December 2020, due to I.T.'s continued behavioral issues, and after finding that visits between I.T. and Father impaired I.T.'s emotional development, the court ordered visitation between the two suspended until further order of the court. I.T. was diagnosed with post-traumatic stress disorder as a result of the abuse he suffered from Father.
- [20] The termination fact-finding hearing commenced on January 22 and concluded on January 28, 2021. In the months leading up to the termination hearing, the visitation supervisors observed that Mother required significant assistance with the children during visitation, Father was rough with the children and unable to have age-appropriate conversations with them, and Parents often argued in front of the children. Tr. Vol. II, pp. 247-50. Mother and Father had resumed their relationship and were living together on the date of the hearing.
- [21] Mother testified that Father did not abuse the children. Tr. Vol. II, p. 80. Mother believed that the children were safe with Father and wanted them all to live together. Tr. Vol. II, pp. 80, 84. Yet, she testified that Father explained that he hits the children because they have "demons inside of them." *Id.* at 79. Mother also testified that the 2017 injuries I.T. suffered occurred when he fell

off a wood pile and his bike. *Id.* at 78-79. Mother described the incident where Father grabbed her arms and threw her on the couch leaving bruises on her arms as a “please sit down kind of altercation.” *Id.* at 76.

[22] Father does not believe he has used excessive force while disciplining the children. He also blamed Mother for the incident where he struck E.T. in the eye. Tr. Vol. II, p. 222. Father admitted that he struck E.T. once too hard because he was stressed. Tr. Vol. II, p. 229. Father testified that if his family was reunified “domestic violence would not be a problem[] because it never was a problem.” Tr. Vol. III, p. 64.

[23] Dr. Ralph Hicks, a member of the Riley Child protective team, testified that children who are the victims of abuse often suffer from numerous mental health issues including anxiety, depression, and behavioral problems. Tr. Vol. II, p. 64. And remaining in an abusive household poses a continued risk for the children. Tr. Vol. II, p. 67. The DCS case manager testified that in addition to failing to improve their parenting skills, the Parents were unable to provide stability for the children. Parents lacked stable employment and housing throughout the proceedings. The case manager testified that Parents still lack an understanding of appropriate discipline versus abuse and the children are not safe in Parents’ care. Tr. Vol. III, pp. 14, 20-21. The case manager believed that terminating Parents’ parental rights was in the children’s best interests. Tr. Vol. III, pp. 22-23. The court appointed special advocate agreed. *Id.* at 32.

[24] On March 23, 2021, the trial court issued its order terminating Parents’ parental rights to all three children. The trial court found that Father is an “unsafe caregiver for the children” and Mother is unable to protect the children from Father. Father’s Appellant App. p. 59.⁵ The court also found that Mother failed to make “personal progress to be a safe parent to her children.” *Id.* at 60. Ultimately, the court concluded that termination of Parents’ parental rights was in the children’s best interests because “[e]very time that the children have been returned to their parents’ care, the children have faced physical abuse. The parents have not changed their behavior or relationship dynamic, and the children risk continued physical, emotional, and developmental harm from Mother and Father.” *Id.* at 61. Mother and Father both appeal.⁶

Standard of Review

[25] Indiana appellate courts have long adhered to a highly deferential standard of review in cases involving the termination of parental rights. *In re S.K.*, 124 N.E.3d 1225, 1230–31 (Ind. Ct. App. 2019). In analyzing the trial court’s decision, we neither reweigh the evidence nor assess witness credibility. *Id.* We consider only the evidence and reasonable inferences favorable to the court’s judgment. *Id.* In deference to the trial court’s unique position to assess the

⁵ The trial court issued one order terminating Parents’ parental rights. The order is included in both Parents’ appendices.

⁶ Mother and Father each filed appellate briefs under separate cause numbers. On August 4, 2021, our court consolidated the appeals.

evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *Id.*

[26] To determine whether a termination decision is clearly erroneous, we apply a two-tiered standard of review to the trial court’s findings of facts and conclusions of law. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings; and second, we determine 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.” *In re A.D.S.*, 987 N.E.2d 1150, 1156 (Ind. Ct. App. 2013), *trans. denied*. If the evidence and inferences support the court's termination decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Discussion and Decision

[27] It is well-settled that the parent-child relationship is one of society’s most cherished relationships. *See, e.g., In re A.G.*, 45 N.E.3d 471, 475 (Ind. Ct. App. 2015), *trans. denied*. Indiana law thus sets a high bar to sever that relationship by requiring DCS to prove four elements by clear and convincing evidence. *Ind. Code* § 31-35-2-4(b)(2) (2021). Two of those elements are at issue here: (1) whether there is a reasonable probability that the conditions that resulted in the

children's removal from the home will not be remedied; and (2) whether termination is in the children's best interests.⁷ I.C. § 31-35-2-4(b)(2)(B)(i), (C).

[28] Clear and convincing evidence need not establish that the continued custody of the parent is wholly inadequate for the child's very survival. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 148 (Ind. 2005). It is instead sufficient to show that the child's emotional and physical development are put at risk by the parent's custody. *Id.* If the court finds the allegations in a petition are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a).

[29] The Parents argue that DCS failed to present clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the children's removal from their home will not be remedied and that termination of their parental rights is in the children's best interests.

I. Clear and convincing evidence supports the trial court's finding that the conditions that resulted in the children's removal will not be remedied.

[30] When we review whether there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied, our courts engage in a two-step analysis. See *In re K.T.K.*, 989 N.E.2d 1225, 1231 (Ind. 2013).

First, "we must ascertain what conditions led to their placement and retention

⁷ Because Indiana Code subsection 31-35-2-4(b)(2)(B) is written in the disjunctive, the trial court is required to find that only one prong of subsection 4(b)(2)(B) has been established by clear and convincing evidence. *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010). Therefore, although Father and Mother also argue that clear and convincing evidence does not support the trial court's finding that there is a reasonable probability that continuing the parent-child relationship poses a threat to the children's well-being, see I.C. § 31-35-2-4(b)(2)(B)(ii), we need not address that argument in this appeal.

in foster care.” *Id.* Second, we “determine whether there is a reasonable probability that those conditions will not be remedied.” *Id.* (quoting *In re I.A.*, 934 N.E.2d 1127, 1134 (Ind. 2010)). In making the latter determination, we “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren].” *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied.*

[31] Father argues DCS’ “continued concern for physical abuse is unwarranted.” Father’s Br. at 17. Father claims that “there have been no concerns for inflicted, non-accidental injury or suspicious injuries since October 2018.” *Id.* Father argues that yanking E.T. over a baby gate in Summer 2020 and smacking I.T.’s hand was “reasonable parental discipline.” *Id.* at 13.

[32] But Father’s only contact with the children for most of the four years this case has been pending has been during supervised visitation. When Father was allowed to return to the home for a trial home visit in Fall 2018, he struck E.T. in the eye and injured Mother when he threw her on a couch. Even during supervised visitation, Father has had issues with controlling his emotions. He yelled at visitation supervisors, made inappropriate comments to the children, called I.T. a foul name, and was physically inappropriate with I.T. and E.T. Father makes excuses for his behavior and refuses to take responsibility for his actions. He still blames Mother for punching E.T. in the eye and claims I.T.’s 2017 injuries occurred while he was playing. None of the service providers or mental health professionals who evaluated Father believed that the children would be safe from abuse if placed in his care.

[33] Mother argues that DCS failed to present clear and convincing evidence that she will not protect her children from physical abuse. Mother repeatedly argues that she has not been given the opportunity to demonstrate that she will protect her children. However, Mother's own testimony at the termination hearings support the trial court's findings that Mother will not protect the children from Father and physical abuse. *See* Tr. Vol. II, pp. 80, 84. In particular, Mother continues to make excuses for Father's behavior and minimizes the abuse in their own relationship, often taking the blame for Father's abuse. Mother admitted that Father claims that he hits the children because they have "demons inside of them." *Id.* at 79. Yet, she continues to maintain that they are safe in Father's care and that he does not abuse them. Mother failed to protect the children from Father's abuse in the past, and there is no evidence in the record from which we can conclude that Mother understands the risk Father poses to the children or the impact the domestic abuse in their household has on the children.

[34] For all of those reasons, we conclude that DCS presented clear and convincing evidence to support the trial court's finding that there is a reasonable probability that the conditions that resulted in the children's removal from the home will not be remedied.

II. Clear and convincing evidence supports the trial court's finding that termination of parental rights is in the children's best interests.

[35] A court's consideration of whether termination of parental rights is in a children's best interests is "[p]erhaps the most difficult determination" a trial

court must make in a termination proceeding. *In re E.M.*, 4 N.E.3d 636, 647 (Ind. 2014). When making this decision, the court must look beyond the factors identified by DCS and examine the totality of the evidence. *A.D.S.*, 987 N.E.2d at 1158. In doing so, the court must subordinate the interests of the parent to those of the child. *Id.* at 1155. Central among these interests is a child’s need for permanency. *In re G.Y.*, 904 N.E.2d 1257, 1265 (Ind. 2009). Indeed, “children cannot wait indefinitely for their parents to work toward preservation or reunification.” *E.M.*, 4 N.E.3d at 648. Further, the recommendation from service providers and the children’s guardian ad litem to terminate parental rights accompanied by evidence that the conditions resulting in removal will not be remedied can be sufficient to establish that termination is in the children’s best interests. *In re A.S.*, 17 N.E.3d 994, 1005 (Ind. Ct. App. 2014), *trans. denied.*

[36] Father claims that DCS failed to prove that Father is incapable of providing the children with the permanency and stability that they need. Father claims that his physical abuse and inappropriate statements to the children over the last four years are simply “slip-ups.” Father’s Br. at 13. And Father asserts that “DCS overreacted to these slip-ups by intermittently requesting suspension of his visitation, primarily with I.T.” *Id.*

[37] Mother similarly argues that the children’s need for stability and permanency does not require termination of her parental rights. Mother also claims that DCS set her “up for failure” because she is only able to protect her children if she ensures that they are not in Father’s care. Mother’s Br. at 18. Therefore,

Mother asserts that DCS has “pit[ted]” the parents against each other instead of attempting to reunify the family. *Id.*

[38] Parents continue to minimize Father’s physical abuse and the impact it has had on the children, particularly I.T. who has been twice hospitalized because of his aggressive behavior. Mother does not understand the risk that Father poses to the children. She still views Father’s abuse as appropriate discipline, makes excuses for Father, and blames herself for the abuse. Therapy and attempts to educate Mother about the impact of domestic abuse have failed. Mother still believes that the children are safe in Father’s care. Father also blames others for his actions or simply refuses to believe that he has abused his children and Mother. Father claims that if his family was reunified “domestic violence would not be a problem[] because it never was a problem.” Tr. Vol. III, p. 64.

[39] Moreover, Parents have not maintained a stable household or income throughout these proceedings. Father was homeless for various periods of time during the proceedings. Father has had numerous jobs but is unable to maintain his employment for any significant length of time. The children need stability and a permanent home safe from domestic violence.

[40] Mother’s therapist, Father’s therapist, the family case manager, and CASA all agreed that the children were not safe in Parents’ care. The case manager and CASA testified that termination of Parents’ parental rights was in the children’s best interests. Tr. Vol. III, pp. 22-23, 32.

[41] For all of these reasons, we conclude that DCS presented clear and convincing evidence to support the trial court's finding that termination of Mother's and Father's parental rights is in the children's best interests.

Conclusion

[42] Clear and convincing evidence supports the trial court's order terminating Mother's and Father's parental rights.

[43] Affirmed.

Tavitas, J., and Weissmann, J., concur.