

## 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

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In the Matter of the Termination  
of the Parent-Child Relationship  
of T.A. (Minor Child);

R.A. (Father),

*Appellant-Respondent,*

v.

Indiana Department of Child  
Services,

*Appellee-Petitioner.*

November 2, 2021

Court of Appeals Case No.  
21A-JT-1171

Appeal from the Elkhart Circuit  
Court

The Honorable Michael A.  
Christofeno, Judge

Trial Court Cause No.  
20C01-2102-JT-12

**Najam, Judge.**

## Statement of the Case

- [1] R.A. (“Father”) appeals the trial court’s termination of his parental rights over his minor child T.A. (“Child”). Father presents a single issue for our review, namely, whether the Indiana Department of Child Services (“DCS”) presented sufficient evidence to support the termination of his parental rights.
- [2] We affirm.

## Facts and Procedural History

- [3] Father and H.A. (“Mother”) have one child together, Child, born August 21, 2018. Child has special medical needs because he has a “cranial shunt.” Appellant’s App. Vol. 2 at 15. On May 5, 2020, the Indiana Department of Child Services (“DCS”) removed Child from Mother’s care after both Mother and Child tested positive for amphetamine and methamphetamine. At that time, Father, who was not living with Mother and Child, stated that he was “an addict” and did not have stable housing. *Id.* at 13. DCS filed a petition alleging that Child was a child in need of services (“CHINS”).
- [4] At a factfinding hearing on the CHINS petition, Father appeared and admitted that Child was a CHINS. The trial court found that Child was a CHINS. Following a disposition hearing, the trial court ordered Father to, among other things: complete a substance abuse assessment and successfully complete all recommended treatment; submit to random drug screens; complete a parent/family functioning assessment and follow all recommendations; and attend all scheduled visitations with Child.

- [5] Father did not comply with any part of the dispositional order. Father did not complete any of the assessments or engage in any services, and he only visited Child *twice*, on June 25 and 30, 2020. Father has not seen Child since that time.
- [6] On February 18, 2021, DCS filed a petition to terminate Mother’s and Father’s parental rights over Child. At the ensuing factfinding hearing, both Mother and Father, who was incarcerated, appeared and were represented by counsel. Shortly after the hearing commenced, Mother voluntarily relinquished her parental rights.<sup>1</sup> On May 17, the trial court entered an order terminating both Mother’s and Father’s parental rights. This appeal ensued.

## **Discussion and Decision**

- [7] Father contends that the trial court erred when it terminated his parental rights. We begin our review of this issue by acknowledging that “[t]he traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution.” *Bailey v. Tippecanoe Div. of Fam. & Child. (In re M.B.)*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding a termination. *Schultz v. Porter Cnty. Off. of Fam. & Child. (In re K.S.)*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *Id.*

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<sup>1</sup> And Mother does not participate in this appeal.

Although the right to raise one’s own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

[8] Before an involuntary termination of parental rights can occur in Indiana, DCS is required to allege and prove:

(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.

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(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) (2021). DCS’s “burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *R. Y. v. Ind. Dep’t of Child Servs. (In re G. Y.)*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2).

[9] When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Peterson v. Marion Cnty. Off. of Fam. & Child. (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 that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *Judy S. v. Noble Cnty. Off. of Fam. & Child. (In re L.S.)*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[10] Here, in terminating Father's parental rights, the trial court entered specific findings of fact and conclusions thereon. When a trial court's judgment contains special findings and conclusions, we apply a two-tiered standard of review. *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." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. *In re L.S.*, 717 N.E.2d at 208.

[11] Father does not challenge any of the trial court's findings. Rather, Father challenges the trial court's conclusions that (1) the conditions that resulted in Child's removal and the reasons for his placement outside of Father's home will not be remedied, (2) that termination is in Child's best interests, and (3) that

there is a satisfactory plan for the care and treatment of Child. Because Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and because Father does not contend that the court erred when it concluded that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Child, Father has waived that issue for our review. Ind. Appellate Rule 46(A)(8)(a).

[12] Waiver notwithstanding, we address the merits of Father's contention that DCS presented insufficient evidence to support termination of his parental rights. The trial court concluded both that (1) the conditions that resulted in Child's removal and the reasons for Child's placement outside of Father's home will not be remedied and (2) that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of Child. However, again, as Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, we need only address on appeal the sufficiency of the evidence to support one prong of that subsection of the statute. Accordingly, we address whether DCS presented sufficient evidence to prove that the conditions that resulted in Child's removal and the reasons for Child's placement outside of Father's home will not be remedied. We also address Father's contentions that termination of Father's parental rights is not in Child's best interests and that there is not a satisfactory plan for the care and treatment of Child.

*Reasons for Child's Placement Outside of Father's Home*

[13] This Court has clarified that, given the wording of the statute, it is not just the basis for the initial removal of the child that may be considered for purposes of

determining whether a parent's rights should be terminated, but also any basis resulting in the continued placement outside of a parent's home. *Inkenhaus v. Vanderburgh Cnty. Off. of Fam. & Child. (In re A.I.)*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Here, the trial court properly considered the conditions leading to the continued placement of Child outside of Father's home. And the evidence shows that Father has not demonstrated any willingness or ability to provide a stable home for Child.

[14] We hold that the evidence supports the trial court's findings and conclusion on this issue. To determine whether there is a reasonable probability that the reasons for Child's continued placement outside of Father's home will not be remedied, the trial court should judge Father's fitness to care for Child at the time of the termination hearing, taking into consideration evidence of changed conditions. *See E.M. v. Ind. Dep't of Child Servs. (In re E.M.)*, 4 N.E.3d 636, 643 (Ind. 2014). However, the court must also "evaluate the parent[s'] habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren]." *Moore v. Jasper Cnty. Dep't of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008) (quotations and citations omitted). Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.* Moreover, DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *Id.*

[15] The trial court found, and the evidence shows, that Father continued to abuse drugs and had not sought substance abuse treatment; Father “did nothing to take advantage of the help offered to him by” DCS; Father did not have a history of stable housing and was currently incarcerated; and Father had a “pending drug charge involving methamphetamine.” Appellant’s App. Vol. 2 at 14-15. The CASA testified that Father is “not capable of giving [Child] a safe home or the permanency he needs.” *Id.* at 17. Father’s argument on appeal is simply an invitation for this Court to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. Based on the totality of the circumstances, we hold that the trial court’s findings support its conclusion that there is a reasonable probability the conditions that resulted in Child’s removal and the reasons for his placement outside of Father’s home will not be remedied.

#### *Best Interests*

[16] In determining what is in a child’s best interests, a juvenile court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *A.S. v. Ind. Dep’t of Child Servs. (In re A.K.)*, 924 N.E.2d 212, 223 (Ind. Ct. App. 2010). A parent’s historical inability to provide “adequate housing, stability, and supervision,” in addition to the parent’s current inability to do so, supports finding termination of parental rights is in the best interests of the child. *Id.*

[17] When making its decision, the court must subordinate the interests of the parents to those of the child. *See Stewart v. Ind. Dep’t of Child Servs. (In re J.S.)*,



906 N.E.2d 226, 236 (Ind. Ct. App. 2009). “The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship.” *Id.* Moreover, this Court has previously held that recommendations of the family case manager and court-appointed advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child’s best interests. *Id.*

[18] Here, Father only visited with Child *twice* during these proceedings, and Father has not seen Child since June 2020. And Father has not participated in any offered services. Father was incarcerated at the time of the factfinding hearing, and he had a pending drug charge. Father has never taken Child to one of his medical appointments, and Father has never spoken with one of Child’s doctors about Child’s special medical needs. As the trial court’s findings demonstrate, Father has not shown that he is capable of parenting Child. Child is thriving in his pre-adoptive home. Both the CASA and case manager testified that termination of Father’s parental rights is in Child’s best interests. Given the totality of the evidence, Father cannot show that the trial court erred when it concluded that termination of his rights is in Child’s best interests.

#### *Satisfactory Plan*

[19] Finally, Father contends that he should have been given more time to be in Child’s life and that, therefore, adoption is not a satisfactory plan. However, as this Court has held, “adoption *is* a ‘satisfactory plan’ for the care and treatment of a child under the termination of parental rights statute,” *period. M.M. v. Ind.*

*Dep't of Child Servs. (In re B.M.)*, 913 N.E.2d 1283, 1287 (Ind. Ct. App. 2009) (emphasis added). Here, the evidence supports the trial court's conclusion that DCS has a satisfactory plan for the care and treatment of Child, namely, adoption by his foster parents.

### ***Conclusion***

[20] DCS has shown by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in Child's removal or the reasons for placement outside of Father's home will not be remedied; that termination is in the best interests of Child; and that DCS has a satisfactory plan for the care and treatment of Child. Accordingly, we hold that the trial court did not err when it terminated Father's parental rights.

[21] Affirmed.

Riley, J., and Brown, J., concur.