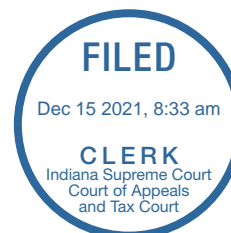


MEMORANDUM DECISION

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: K.S. (Minor Child),

K.G. (Father),

Appellant-Respondent,

v.

Indiana Department of
Child Services,

Appellee-Petitioner,

and

Lake County Court Appointed
Special Advocate,

Co-Appellee-Appointed CASA.

December 15, 2021

Court of Appeals Case No.
21A-JT-1373

Appeal from the Lake Superior
Court

The Honorable Thomas P.
Stefaniak, Jr., Judge

Trial Court Cause No.
45D06-2009-JT-134

Weissmann, Judge.

- [1] K.G. (Father) was a long-haul truck driver who, due to his travel, largely left the care of his medically fragile son, K.S., to the child's mother (Mother). K.S. (Child) declined in health while in Mother's care. The State eventually took custody of Child after Mother admitted she was too overwhelmed to meet his significant medical needs and Father declined to take custody of him. Child remained in the care of foster parents while Father attempted to gain the training, home, and job that would allow him to take over Child's specialized care. The trial court ultimately terminated Father's parental rights, and he claims the evidence was insufficient to support that determination. We disagree and affirm the trial court's order.

Facts

- [2] Born several months prematurely in March 2018, Child suffered from chronic lung disease as well as other serious health problems that required his feeding through a nasogastric tube. Mother was Child's primary caregiver. Father worked as an over-the-road truck driver and was usually gone for three weeks at a time. However, when Father was not on the road, he would stay with Mother.
- [3] When Child was about 10 months old, he was hospitalized for failure to thrive. The Indiana Department of Child Services (DCS) petitioned to find Child to be a child in need of services (CHINS). DCS alleged Child was medically fragile, his parents had failed to take him to medical appointments, and his weight loss

had been caused by inadequate care. Mother admitted that Father was rarely home due to his work and that she was overwhelmed by Child's care due to her anxiety and depression. Father admitted the allegations in the CHINS petition. Finding Child to be a CHINS, the trial court ordered Father to complete a parenting assessment, follow all resulting recommendations, and participate in Fatherhood Initiatives to establish paternity and then custody. The trial court allowed Child to remain in Mother's home.

- [4] Child continued not to thrive. Three months after the CHINS filing, the trial court offered custody of Child to Father. Father declined based on his lack of housing, his frequent work-related absences, and questions regarding Child's paternity. The trial court ordered Child placed in foster care, in which he has remained continuously since April 2019. Child's foster parents hope to adopt him.
- [5] Father, who has four other children, continued to work as an over-the-road truck driver. He failed to consistently attend in-person and virtual visitations with Child, resulting in his inability to progress beyond supervised visitation. Father completed a parenting assessment. Father established paternity but never obtained custody of Child or stable housing.
- [6] DCS filed a petition to terminate Father's parental rights in September 2020. In April 2021, Father finally obtained local employment that would allow him to be home every evening to care for Child. He also had moved from living in his truck to living with relatives in their homes.

- [7] At the time of the termination hearing, Child engaged almost daily in therapy—either physical, occupational, aqua, or speech. Child must be fed every four hours through a rotation of mouth and nasogastric tube feedings, with close monitoring to ensure he does not vomit and aspirate. Child, who largely is non-verbal at age 3, requires breathing treatments twice daily. He also suffers from sleep apnea and cerebral palsy and has a shunt in his head. Child’s health problems prevent him from attending a daycare facility.
- [8] To care for Child while he was working, Father planned to depend on his fiancée, his mother, and his sister. However, neither Father nor his relatives had undergone the training necessary to care for Child, although Father had been certified in cardiopulmonary resuscitation.
- [9] After a hearing, the trial court granted DCS’s petition to terminate Father’s parental rights. Father appeals.

Discussion and Decision

- [10] Father contends the evidence is insufficient to support the trial court’s judgment. 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). A trial court must terminate the parent-child relationship where it finds DCS has proven these allegations by clear and convincing evidence. Ind. Code §§ 31-35-2-8, -37-14-2.

[11] We do not reweigh evidence or judge witness credibility when reviewing the termination of parental rights. *In re R.S.*, 56 N.E.3d 625, 628 (Ind. 2016). We will set aside the judgment only if it is clearly erroneous. *Id.* A two-tiered standard of review applies: first, we determine whether the evidence supports the findings and second, whether the findings support the judgment. *Id.*

[12] Father specifically challenges the trial court's adverse conclusions under: Indiana Code § 31-35-2-4(b)(2)(B)(i) (remedying of conditions); Indiana Code § 31-35-2-4(b)(2)(B)(ii) (threat to the child); and Indiana Code § 31-35-2-4(b)(2)(C) (best interests of the child). Father fails to establish any inadequacy in those conclusions.

I. Remedying of Conditions and Threat to Child Conclusions

[13] Father relies on identical arguments in challenging the trial court's conclusions under Indiana Code § 31-35-2-4(b)(2)(B)(i) and (ii). When reviewing a trial

court's conclusion under Indiana Code § 31-35-2-4(b)(2)(B)(i) that the conditions are unlikely to be remedied, we engage in a two-step analysis. *In re K.E.*, 39 N.E.3d 641, 647 (Ind. 2015). We first identify the conditions that led to removal and then determine whether there is a reasonable probability that those conditions will not be remedied. *Id.* The second step of the analysis requires a determination of the parent's fitness at the time of the termination hearing after consideration of any evidence of changed conditions. *Id.* "Changed conditions are balanced against habitual patterns of conduct to determine whether there is a substantial probability of future neglect." *Id.* (citing *In Re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014)). Habitual conduct may include history of neglect, failure to provide support, and lack of adequate housing and employment. *Id.*

[14] As to the trial court's conclusion that continuation of the parent-child relationship threatens the child, we note that "a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that [his] physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In Re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002) (citations omitted). But a parent's rights should not be terminated simply because a better home for the child exists. *In Re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

[15] Child was removed from his parents due to his failure to thrive and Father's unwillingness to take custody of Child due to Father's work, lack of housing, and uncertainty about Child's paternity. Child continues to be placed outside

Father's home because Father failed to obtain stable housing and delayed securing alternative employment that would allow him to care for Child.

[16] The trial court based its remedying conditions and threat to Child conclusions on several findings:

- Father was unable to care for Child at removal.
- Father had complained continually about service providers not helping him, leading to four changes in providers. Father failed to work with them.
- Father's visits with Child were sporadic, with Father attending only 58 of 100 scheduled visits in 2020 and 8 out of 33 scheduled visits in 2021. As a result, he had not progressed beyond supervised visitation.
- Father is unlikely to be able to provide the extensive medical care and treatment that Child requires because he has not participated in the child's care and treatment, having attended only two of Child's numerous medical appointments.
- Father has provided no emotional or financial support for the child.
- Father and the individuals who would help him with Child have only minimal training to care for Child's extensive medical needs.
- Father has not demonstrated an ability to independently parent the child and provide the necessary care, support, and supervision that was lacking at Child's removal.

[17] Father contends the remedying conditions and threat to Child conclusions are erroneous because they are built on defective findings. He contends he had stable housing for two years prior to the termination hearing and that his visitations were sporadic because he was an over-the-road truck driver. But Father does not dispute the trial court's finding that he could have arranged to visit virtually with Child while he was working and failed to do so. *See In Re*

S.S., 120 N.E.3d 605, 610 (Ind. Ct. App. 2019) (unchallenged findings are accepted as true). Father also provides no citations to the record to evidence showing he had stable housing. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that each contention in the argument section of an appellant’s brief “must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . .”).

[18] Although Father testified to having stable housing, the record shows otherwise. Father claimed to be living in his mother’s two-bedroom apartment, where his fiancée and two other children also live. Tr. Vol. II, p. 121. Meanwhile, Father’s mother testified that he lived with his sister, and his fiancée testified that he alternates between his mother’s and his sister’s homes. Tr. Vol. II, pp. 155-59. Father also failed to comply with DCS’s request for a copy of his relatives’ leases or any documentation showing he was a legal occupant of their residences. The trial court did not err in finding Father has a history of housing instability.

[19] Father also contends he was compliant with court-ordered services and that his failure to obtain the necessary medical training to care for Child was DCS’s fault. However, he concedes he did not obtain custody of Child as ordered and that he failed to comply with the visitation requirements. Although some of the scheduling issues with the medical training were outside Father’s control, he did little to further such training and cannot blame DCS for his failures. The trial court did not err in finding Father non-compliant.

[20] Although Father’s intentions are good, he has not shown that he is ready to care for Child. Father still does not have a stable home environment with trained caretakers in which Child’s extraordinary medical needs—including constant monitoring to protect against vomiting and potentially fatal aspiration—will be met.¹ The trial court specifically noted that it would have denied the petition to terminate Father’s parental rights if not for Child’s medical needs. As neither Father nor his family were capable of providing the specialized care on which Child’s life depends after two years of services, the Court justifiably refused “to gamble with [Child’s] life.” App. Vol. II, p. 4. The trial court properly concluded that Father was not likely to remedy the conditions that prompted removal and continued placement outside his home and that continuation of the parent-child relationship poses a threat to Child’s well-being.

II. Best Interests of Child

[21] Father’s final claim is that the trial court erroneously determined that termination of his parental rights was in Child’s best interests. When determining a child’s best interests, the trial court is required to consider the totality of the evidence. *A.D.S. v. Ind. Dep’t of Child Servs.*, 987 N.E.2d 1150, 1158 (Ind. Ct. App. 2013). The court must subordinate the interests of the

¹ Child’s need for supervision is so great that his foster mother, a nurse, reduced her work hours from full-time to four hours weekly to ensure Child received adequate care. And only trained family members assist in caring for Child. Even with his foster mother’s specialized medical training, Child needed emergency medical services at least three times while living in the foster home.

parent to those of the children and need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *Id.*

[22] In arguing that termination was not in Child's best interests, Father simply asserts that: 1) the totality of the evidence showed "DCS failed to possibly come close to satisfying the standard of clear and convincing"; and 2) the trial court failed to address the pain and suffering Child will experience when his contact with Father and his biological siblings is halted. Neither argument is supported by citations to the record, including to any evidence suggesting Child even has contact with his biological siblings. *See* App. R. 46(A)(8)(a). Therefore, the argument relating to Child's reaction to termination of Father's parental rights is wholly speculative.

[23] Regardless, the totality of the evidence supports the trial court's conclusion that termination of Father's parental rights was in Child's best interests. Father waited until two years after Child's removal and six months after DCS petitioned to terminate his parental rights to obtain employment that would allow him to be present to care for Child. He did not visit consistently with Child or gain custody of Child in the paternity action as ordered. He still lacks the medical training necessary to care for Child and blames DCS for that inadequacy. Given the evidence of Child's significant medical needs and Father's failure to establish he could satisfy them, DCS proved by clear and convincing evidence that termination of Father's rights was in Child's best interests.

[24] We affirm the trial court's judgment terminating Father's parental rights.

Najam, J., and Vaidik, J., concur.