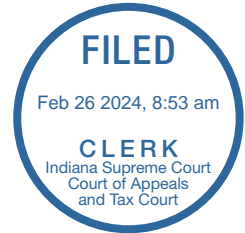


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

In re the Termination of the Parent-Child Relationship of:

P.D., G.D., and F.P. (Minor Children),

And

P.P. (Father)

Appellant-Respondent

v.

Indiana Department of Child Services, et al.

Appellees-Petitioners

February 26, 2024

Court of Appeals Case No.
23A-JT-1110

Appeal from the Marion Superior Court
The Honorable Alicia A. Gooden, Judge
The Honorable Marcia J. Harper, Magistrate

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] P.P. (Father) appeals the involuntary termination of his parental rights to F.P., G.D., and P.D. (the Children). Father presents two issues for our review:

1. Did the trial court abuse its discretion in granting the State's motions to correct P.D.'s surname and to reopen the evidence in the termination cause so the State could offer the Childrens' birth certificates into evidence?

2. Is the trial court's termination of Father's parental rights supported by clear and convincing evidence?

[2] We affirm.

Facts & Procedural History

[3] C.D. (Mother) and Father (collectively, Parents) have three children together: F.P. (born June 12, 2018), G.D. (born July 13, 2019) (collectively, the Girls),

and P.D.¹ (born January 2, 2021).² On July 16, 2020, the Girls were removed from Mother's care due to allegations of neglect. The same day, the Indiana Department of Child Services (DCS) filed a petition alleging the Girls to be children in need of services (CHINS) because Mother, who had a history of substance abuse, was observed to be caring for them while under the influence of illegal substances and she was homeless. Father refused to take in the Girls due to a lack of adequate bedding. On November 9, 2020, upon Parents' admissions, the trial court adjudicated the Girls as CHINS and entered dispositional and parental participation orders, ordering Parents to complete a parenting assessment and participate in home-based case management and random drug screens.

[4] On March 26, 2021, DCS filed a petition alleging P.D. was a CHINS due to Mother's methamphetamine use and Parents' failure to participate in services through the open CHINS case for the Girls. At that time, P.D. was placed on a temporary in-home trial visit with Father contingent upon Father participating in services and maintaining contact with DCS. On April 19, 2021, DCS removed P.D. from Father's care because Father failed to maintain contact with DCS. P.D. was initially placed in the same foster home as the Girls but was moved to a different foster home a few weeks later.

¹ Throughout the CHINS and termination proceedings, P.D. was identified as P.P. As will be explained herein, the trial court ordered the correction of his surname.

² Mother's parental rights to the Children were also terminated. Mother does not participate in this appeal.

- [5] The court held a hearing on June 2, 2021,³ at which, upon Father’s admission, it adjudicated P.D. a CHINS and entered dispositional and parental participation orders. Father was ordered to participate in services to which he had already agreed in the CHINS action for the Girls.
- [6] On February 4, 2022, the permanency plan for the Children was changed from reunification to adoption, and on February 8, 2022, DCS filed petitions to terminate Parents’ parental rights to the Children. The court held a termination fact-finding hearing on November 1 and 15, 2022. Parents did not appear for the November 1 hearing (but were represented by counsel), and only Father appeared for the November 15 hearing.
- [7] Guardian ad Litem Rozelle Harvey (GAL Harvey), who was assigned to represent the best interests of the Children from the beginning of the CHINS actions, described Father’s visitation with the Girls as “very inconsistent” since their removal. *Transcript* at 54. After P.D. was removed from Father’s care, Father did visit with P.D. but not the Girls. GAL Harvey testified that when Father was “engaged” he “did do a great job” and “had very great moments.” *Id.* at 55, 56, 59. But Father eventually stopped visiting P.D. because, according to Father, “life happened.” *Id.* at 59. When Father wanted to resume visits with P.D., DCS required him to visit with all the Children, which Father agreed to do. DCS even altered Father’s visitation schedule when

³ Mother failed to appear at the hearing.

Father reported that there was a conflict with his work schedule. Despite DCS's efforts to work with Father, he remained inconsistent with visitation and then completely disengaged again. According to GAL Harvey, this became a "repetitive cycle" for Father. *Id.* at 60.

[8] Family Case Manager Eric McDonald (FCM McDonald) was assigned to the case in November or December of 2021. Father's interactions with FCM McDonald were "sporadic"; Father would have periods of time when he was active and participating in services, but these were always followed by two- or three-month periods when he would completely disappear. *Id.* at 74. When engaged, Father participated in services including Fatherhood Engagement and visitation. Over the course of a year, FCM McDonald estimated that Father participated in services for "maybe a total of three months." *Id.* Father last visited with the Children in April 2022, and after that, the provider discharged him for noncompliance. Even though attendance at child family team meetings (CFTM) was a precondition to restart visitation with the Children, Father last attended a CFTM during the summer of 2022. DCS tried to reengage Father in September 2022 but was unsuccessful.

[9] Father's housing changed throughout the CHINS proceedings. He lived with family and moved a few different times but did not provide DCS with an address. At the time of the termination fact-finding hearing, DCS did not know that status of Father's housing situation. With regard to employment, Father told DCS he had a job, but he never provided proof. Regarding drug testing, FCM McDonald testified that after a period of "badgering" by DCS, Father

completed a series of drug tests and was excused from further drug screens. *Id.* at 75.

[10] The Girls' foster mother testified that when they were first placed in her home, they were "very, very scared." *Id.* at 19. They were especially frightened of loud noises such as sirens, trains, or airplanes. The Girls also had emotional outbursts, and F.P., who was not willing to talk to adults, would hit herself. The foster parents enrolled F.P. in speech therapy, which she completed in a few months. The foster parents noted a difference in the Girls' behavior after they visited with Father. The Girls would act up, say no to everything, and throw things across the room. They exhibited their worst behaviors when Parents did not show for scheduled visits. When there was a break in visits, the Girls' behaviors improved. When visits resumed, the Girls regressed back to the worst behaviors. F.P., who had been potty trained, started having accidents and became fearful again. The foster parents enrolled the Girls in therapy, where they initially exhibited a lot of aggression. Over time, the Girls progressed and learned to express their feelings and emotions in an appropriate manner.

[11] P.D. has been in the same foster home since May 2021. He is developmentally on target and hitting milestones. P.D. is well-bonded with his foster family. The Girls' foster parents and P.D.'s foster parents often get together so the Children can interact with each other.

- [12] GAL Harvey recommended termination of Father’s parental rights and adoption because Father did not progress during the CHINS actions over the course of nearly two years. GAL Harvey testified that the Children were attached to their foster families and that they were “happy kids” who were “outgoing, very active.” *Id.* at 51. GAL Harvey described the Children as “thriving” and found their placements to be “loving” and “stable.” *Id.* at 52.
- [13] At the conclusion of the November 15, 2022 hearing, evidence was closed, final arguments were presented, and the court took the matter under advisement. The following day, DCS filed a motion to reopen the evidence in the termination actions so it could introduce the Children’s birth certificates that DCS had just received. In its motion, DCS noted that the birth certificate for P.D. contained a surname different than that used in the caption and court documents in the CHINS and termination actions related to P.D. Father objected and requested dismissal of the termination petitions, arguing that DCS had not done its due diligence in securing the birth certificate before the close of evidence. Over Parents’ objections, the court “reopened” the evidence and set a hearing for December 22, 2022, for “continuation of the fact finding hearing.” *Appellant’s Appendix Vol. II* at 132.
- [14] Contemporaneously with the motion to reopen the evidence, DCS filed in P.D.’s CHINS action a motion for relief from judgment pursuant to Ind. Trial Rule 60(A), arguing that P.D.’s name was incorrect in the court documents and that the spelling needed to be corrected from P.P. (Father’s surname) to P.D.

(Mother's surname).⁴ The court granted the motion the same day and ordered that DCS's CHINS petition be "amended by interlineation to reflect the child's name as "[P.D.]" *Appellant's Appendix Vol. III* at 27. The court subsequently denied Father's motion to reconsider.

[15] On April 21, 2023, the court entered its order terminating Parents' parental rights in the Children. Father now appeals. Additional facts will be provided as necessary.

Discussion & Decision

1. Motion for Relief from Judgment

[16] Father argues that the trial court abused its discretion in granting DCS's T.R. 60(A) motion for relief from judgment in P.D.'s CHINS action. T.R. 60(A) states that "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the Notice of Completion of Clerk's Record is filed under Appellate Rule 8." A "clerical error" in this context has been defined as "a mistake by a clerk, counsel, judge, or printer that is not a result of a judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Somerville Auto Transp. Serv. v. Auto. Fin. Corp.*, 12 N.E.3d 955, 963 (Ind. Ct. App. 2014), *trans. denied*. The reason for this rule is that "in the case of clearly demonstrable mechanical errors, the interests of

⁴ In its motion, DCS noted that Father objected thereto.

fairness outweigh the interests of finality that attend the prior adjudication. On the other hand, where the ‘mistake’ is one of substance, the finality principle controls.” *Id.* (citing *Rosentrater v. Rosentrater*, 708 N.E.2d 628, 631 (Ind. Ct. App. 1999)). We review the trial court’s ruling for an abuse of discretion. *Id.* at 961.

[17] Here, DCS sought to correct the surname used to refer to the youngest child, P.D. The CHINS action was filed using Father’s surname—i.e., P.P., and it was subsequently discovered that Mother’s surname was used on P.D.’s birth certificate. Father was at all times the alleged father of P.D. and Father never disputed that P.D. was his child. In fact, P.D. was once placed in Father’s care, and Father did not object. Father admitted that P.D. was a CHINS and never challenged the CHINS dispositional order. At no time throughout the CHINS proceedings did Father bring to DCS’s or the court’s attention that P.D.’s legal surname was Mother’s surname and not his. In short, the above demonstrates that Father never questioned the identity of the child and never posed an objection to P.D.’s surname until DCS wanted to change it. Under these circumstances, the use of the incorrect surname to refer to P.D. was not a substantive mistake, but rather was an oversight by DCS. The trial court did not abuse its discretion in granting DCS’s T.R. 60(A) motion to correct P.D.’s surname to the legal name set out on his birth certificate.

[18] Father also argues that his due process rights were violated when the trial court ruled on DCS’s T.R. 60(A) motion without allowing him time to respond and

when it reopened the evidence so DCS could introduce the Children’s birth certificates into evidence. We disagree.

[19] The phrase “due process” expresses the requirement of “fundamental fairness.” *In re C.G.*, 954 N.E.2d 910, 917-18 (Ind. 2011). The fundamental requirement of due process is “the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In CHINS and termination cases, the process that is due turns on a balancing of three factors: (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. *A.P. v. Porter Cnty. Office of Family & Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *trans. denied*. Both a parent’s interests in maintaining the care, custody, and control of his or her child and the State’s countervailing interests in protecting the welfare of children are substantial. *C.G.*, 954 N.E.2d at 917. Thus, our due process analysis turns on (2)—the risk of error.

[20] As we set out above, DCS’s use of the wrong surname was a clerical mistake that resulted from an oversight by DCS. There was never a dispute about the identity of P.D. as Father’s child. The issue arose only after DCS received P.D.’s birth certificate and immediately moved to change his name on the

pleadings to conform to the birth certificate.⁵ Father nevertheless argues that he was entitled to fifteen days to respond and state his objection to DCS's motion. Father, however, has not explained what his objection to DCS's motion would have been. As we explained above, DCS's use of the incorrect surname was a clerical mistake; it had no impact on the finality of the CHINS adjudication. Under these circumstances, Father's due process rights were not violated when the trial court granted DCS's T.R. 60(A) motion without affording him fifteen days to respond with his objection.

[21] Father also argues that the trial court violated his due process rights when it reopened the evidence. At the December 22 hearing, the court acknowledged that DCS "didn't do their job" but asked Parents in what way they thought they were prejudiced. *Transcript* at 109. Parents argued that there was a due process issue because there was no CHINS adjudication as to P.D. but rather the CHINS adjudication was as to child P.P. The court found that there was no showing that Parents had been prejudiced in terms of reunification efforts and services provided as a result of the incorrect surname to refer to P.D. Despite the surname mixup, the court noted that there is no dispute that P.D. is the same child that has been the subject of the CHINS and termination proceedings or that Father is P.D.'s father. There was thus no risk of error in admitting

⁵ DCS admitted that it did not timely secure the birth certificates of the Children, and the trial court agreed, stating that DCS "didn't do their job" and had become "lackadaisical" about timely filing birth certificates. *Transcript* at 109.

P.D.'s birth certificate into the record. Father was not denied due process when the trial court reopened the evidence.

2. Sufficiency

2.a. Conditions for Removal

[22] The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution. *In re G.Y.*, 904 N.E.2d 1257, 1259 (Ind. 2009). The law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). In addition, a court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). The purpose of terminating parental rights is not to punish parents, but to protect their children. *Id.*

[23] When DCS seeks to involuntarily terminate parental rights, it must allege and prove by clear and convincing evidence that one 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[.]

Ind. Code § 31-35-2-4(b)(2)(B); Ind. Code § 31-37-14-2. Among other things, DCS must also prove by clear and convincing evidence that termination is in the best interests of the child and that there is a satisfactory plan for the care and treatment of the child. I.C. § 31-35-2-4(b)(2)(C), (D); I.C. § 31-37-14-2.

[24] Father challenges the trial court's finding that I.C. § 31-35-2-4(b)(2)(B)(i) has been satisfied, i.e., that DCS established by clear and convincing evidence a reasonable probability that the conditions resulting in the Children's removal and placement outside Parents' care will not be remedied. In making a determination in this regard, the trial court must judge a parent's fitness to care for their children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.* In conducting this inquiry, courts may consider 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. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*.

[25] Father argues that the trial court's conclusion that, other than successfully completing random drug screens, Father failed to complete the ordered services is not supported by the record. We disagree.

[26] DCS became involved with the family in July 2020, when it removed the Girls from Mother's care due to neglect and Father was unwilling to take them in. Thereafter, Father admitted the Girls were CHINS. Shortly after P.D. was born, DCS removed him from Mother's care and placed him with Father with stipulations that Father stay in touch with DCS and engage in services. Less than a month later, DCS removed P.D. from Father's home because Father was not communicating with DCS and was not participating in services. DCS does not deny that eventually, Father completed some services and complied with others for a period of time. In fact, Father completed a parenting assessment, and, after some "badgering," successfully completed his drug screens to satisfy the requirement, which the trial court likewise found. *Transcript* at 75. DCS acknowledged that when Father was engaged, he had some "great moments" with the Children. *Id.* at 56. DCS's concern, as expressed by both the FCM and GAL, was Father's lack of consistency.

[27] DCS presented evidence that Father's participation in visitation was inconsistent. Initially, Father visited P.D. and did not visit with the Girls. After DCS required Father to visit with all the Children, he complied for a short time. DCS even adjusted the visitation schedule to fit with Father's work schedule, but to no avail; Father's visits with the Children were inconsistent. It was estimated that in a twelve-month span, Father engaged in services and visitation for a total of about three months. Father last visited with the Children in April 2022. He was thereafter dismissed by the service provider for noncompliance. We also note that the evidence contradicts Father's claim that

he later attempted to resume visitation. Although DCS tried to reengage Father in September 2022, he last attended a CFTM during the summer of 2022 even though his attendance was a precondition to restart his visitation with the Children.

[28] Father also failed to stay in contact with DCS. His interactions with the family case managers and participation in team meetings with DCS were sporadic. The evidence also showed that Father did not demonstrate an ability to maintain stable housing and employment. Father moved several times, often living with family members, but he failed to keep DCS informed as to his address. Father also claimed to be employed but never provided proof of employment.

[29] Father's arguments are nothing more than requests for this court to reweigh the evidence. DCS presented clear and convincing evidence that Father has not remedied the reasons for the removal of the Children.

2.b. Best Interests

[30] Father also argues that the evidence does not support the court's determination that termination of parental rights is in the best interests of the Children. In determining whether termination of parental rights is in the best interests of a child, the trial court is required to look beyond the factors identified by DCS and consider the totality of the evidence. *In re J.C.*, 994 N.E.2d 278, 290 (Ind. Ct. App. 2013). In so doing, the trial court must subordinate the interests of the parent to those of the child, and the court need not wait until a child is

irreversibly harmed before terminating the parent-child relationship. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Our Supreme Court has explained that “[p]ermanency is a central consideration in determining the best interests of a child.” *G. Y.*, 904 N.E.2d at 1265.

[31] GAL Harvey and FCM McDonald both expressed concern about Father’s instability as juxtaposed with the Children’s need for permanency. They testified that the Children are thriving and are well bonded with their respective foster families, who are willing to adopt. The Girls’ foster family and P.D.’s foster family often interact because they feel it is important that the Children have a good relationship with each other. Both the GAL and FCM recommended termination of Father’s parental rights and opined that adoption was in the Children’s best interests. These recommendations, along with the evidence supporting the determination that the conditions resulting in removal will not be remedied, establish that termination is in the Children’s best interests. *See In re P.B.*, 199 N.E.3d 790, 799 (Ind. Ct. App. 2022) (holding that “the recommendation by both the case manager and child advocate to terminate parental rights, in addition to evidence the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests”), *trans. denied*.

[32] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.

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