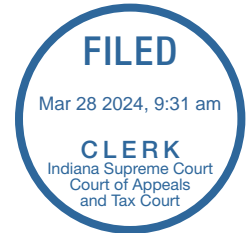


MEMORANDUM DECISION

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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

J.S. (Father) and B.B. (Mother),

Appellant-Respondent

v.

The Indiana Department of Child Services,

Appellee-Petitioner.

March 28, 2024

Court of Appeals Case No.
23A-JT-2295

Appeal from the Whitley Circuit Court

The Honorable James R. Heuer, Senior Judge

Trial Court Cause No.
92C01-2302-JT-5

Memorandum Decision by Judge Pyle

Judges Bailey and Crone concur.

Pyle, Judge.

Statement of the Case

[1] In this consolidated appeal, J.S. (“Father”) appeals the trial court’s order terminating the parent-child relationship with his daughter, T.S. (“T.S.”), and B.B. (“Mother”) appeals the trial court’s order denying her motion to withdraw her consent to T.S.’s adoption. Father argues that there is insufficient evidence to support the termination, and Mother argues that the trial court erred when it denied her motion to withdraw her consent to the adoption. Concluding that there is sufficient evidence to support the termination and that the trial court did not err when it denied Mother’s motion to withdraw her consent to the adoption, we affirm the trial court’s judgments.

[2] We affirm.

Issues

1. Whether there is sufficient evidence to support the termination of Father’s parent-child relationship with T.S.
2. Whether the trial court erred when it denied Mother’s motion to withdraw her consent to T.S.’s adoption.

Facts

- [3] The evidence and reasonable inferences that support the judgment reveal that Mother and Father (collectively “Parents”) are Parents of T.S., who was born in May 2017. Parents were not married when T.S. was born, and Father signed a paternity affidavit. Parents eventually married at some point that is not clear from the record, but in August 2019, Father filed a petition for dissolution.
- [4] In September 2019, the trial court issued a preliminary order awarding Parents joint legal and physical custody of T.S. In July 2020, Mother filed a handwritten pro se motion seeking full custody of T.S. In this motion, Mother alleged that Father had been incarcerated since April 2020 and that he had not contacted T.S. during that time. Mother also alleged that before Father had been incarcerated, Mother had “never felt safe with giving [T.S.] to [Father] because [Mother] would get [T.S.] back with marks or black eyes.” (Ex. Vol. 3 at 125).
- [5] Five months later, in December 2020, the trial court issued a dissolution order wherein the trial court noted that T.S. lived with Mother. The trial court’s order granted Father parenting time with T.S. and provided that upon completion of a parenting class, Parents could resume joint legal and physical custody of T.S.
- [6] In July 2021, Mother tendered to the trial court a handwritten letter wherein she alleged that Father had left bruises on T.S. Mother further alleged that T.S. was not safe at Father’s house and that T.S. “scream[ed] bloody mary and

[held] on to [Mother] with a death grip” when Father picked her up for parenting time. (Ex. Vol. 3 at 132).

- [7] One month later, in August 2021, Father refused to return T.S. to Mother following parenting time. At that time, Father was living with his girlfriend, H.S. (“H.S.”), and his girlfriend’s two- or three-year-old daughter, E.N. (“E.N.”).
- [8] In September 2021, DCS received a report alleging that E.N., who had bruises on her face, scratches on her hips, and a bloodshot eye, was the victim of abuse and that both E.N. and T.S. had poor hygiene. A DCS case manager went to Father’s home and spoke with Father and H.S., who both stated that they did not know how the injuries had occurred. Father subsequently told the case manager that he had spanked E.N. that morning because she had wet the bed. The case manager asked Father and H.S. about illegal substances that she had seen in the home. H.S. responded that Father usually kept his illegal substances locked up under the bed in their bedroom. Father agreed to an informal adjustment to address the issues in the home.
- [9] One week later, in early October 2021, E.N.’s daycare provider noticed that E.N. had bruises on her face. T.S. stated that when she and E.N. got into trouble at home, they got “butt whoopings.” (Ex. Vol. 3 at 25). Both T.S. and E.N. appeared to be nervous when talking about the bruises. Neither Father nor H.S. was able to provide DCS with an adequate explanation for the bruises on E.N.’s face.

[10] The following day, DCS filed a petition alleging T.S. was a CHINS. DCS removed T.S. and E.N. from Father's home because of the domestic violence issues. As T.S. and E.N. were being removed from the home, Father began yelling and throwing items. He told T.S. that the DCS case managers were bad people, and he warned T.S. not to talk to them because they were taking her away from him. T.S. became scared and was afraid to leave Father's home with the case managers.

[11] Following the CHINS detention hearing a few days later, Father began yelling outside the courtroom and "going off on" the DCS case manager. (Tr. Vol. 2 at 17). Father was also "getting in everyone's face" and "being very threatening." (Tr. Vol. 2 at 17).

[12] DCS placed T.S. and E.N. with E.N.'s grandmother, E.S. ("E.S."). When T.S. arrived at E.S.'s home, T.S. was a "hungry little monster." (Tr. Vol. 2 at 51). Specifically, T.S. was hungry all the time as if she had not been fed, and she thought she could do whatever she wanted to do without facing any consequences. T.S. eventually calmed down and her eating "slowed down." (Tr. Vol. 2 at 52). However, when T.S. was getting ready for visits with Father, her demeanor "change[d] back to where [it had] first started[.]" (Tr. Vol. 2 at 52). E.S. subsequently became overwhelmed with caring for T.S. and E.N., and DCS placed T.S. in a foster family.

- [13] At the end of October 2021, the State charged Father with Level 5 felony domestic battery of E.N. Also, in October 2021, DCS transferred T.S.’s case to family case manager Tifini Guin (“FCM Guin”).
- [14] Father began therapeutic supervised visits with T.S. in November 2021. Therapist Charles Butler (“Therapist Butler”), who supervised the visits, was concerned that Father was quick to yell and lose his temper with T.S. At times, Therapist Butler feared that Father would “grab [T.S.] or restrain [T.S.] physically.” (Tr. Vol. 2 at 150). During the course of the weekly visits, Father’s behavior did not change, and Therapist Butler had to end several of the visits early because of Father’s behavior. Father also transitioned into individual therapy with Therapist Butler “to work . . . on lowering his temper and [his] tongue when he got frustrated[.]” (Tr. Vol. 2 at 139).
- [15] In March 2022, Father admitted that T.S. was a CHINS. The trial court entered a dispositional order that required Father to: (1) keep all appointments with service providers; (2) participate in a parenting assessment and successfully complete all recommendations; (3) participate in a substance abuse assessment and successfully complete all recommendations; (4) participate in a psychological evaluation and successfully complete all recommendations; (5) attend all visits with T.S.; (6) participate in home-based family services; (7) participate in Fatherhood Engagement services; and (8) participate in individual counseling.

[16] In April 2022, the State amended the charge against Father for battering E.N. and charged him with Level 6 felony domestic battery. In May 2022, Father pleaded guilty to the Level 6 felony, and the trial court sentenced him to two and one-half years with one and one-half years executed in the Whitley County Jail and one year suspended to probation. One of the probation conditions required Father to participate in a domestic violence MRT program (“a DV/MRT program”).¹

[17] In May 2022, Father began participating in a Whitley County work release program as part of his sentence for his Level 6 felony conviction. His scheduled release date from the work release program was February 2023. While participating in the work release program, Father had the opportunity to engage in DCS services, including visitation with T.S. In July 2022, Father was terminated from the work release program because he had failed to comply with his community corrections case plan and he had called his community corrections case manager “a bitch.” (Tr. Vol. 2 at 33). Father’s last visit with T.S. was in July 2022, shortly before he was terminated from the work release program.

[18] After he had been terminated from the work release program, Father returned to the county jail. He had the opportunity to participate in the Fatherhood Engagement Program while incarcerated, but he attended only a few sessions,

¹ DV/MRT is “a cognitive behavioral therapy class designed to reduce recidivism among those that have . . . battery charges, battery convictions[.]” (Tr. Vol 2 at 163).

was not cooperative with the facilitator, and refused to set goals. Father was discharged from the program because of his lack of participation. Father could have also participated in an MRT program while incarcerated and completed the domestic violence component of the program after he was released.

However, Father refused to do so.

[19] In June and July 2022, Father participated in a psychological and parenting assessment with Bowen Center Therapist Erica Vargas (“Therapist Vargas”). Father had cancelled or failed to attend three previously scheduled assessments. Father told Therapist Vargas that he struggled with controlling his anger and that he “go[es] on a rampage when he is angry.” (Ex. Vol. 3 at 203). Father further told Therapist Vargas that he had attended therapy because DCS had required it. However, Father was unable to recall what issues he had worked on with the therapist. Father further told Therapist Vargas that methamphetamine and marijuana were his drugs of choice and that he had previously smoked both drugs several days a week. In addition, Father told Therapist Vargas that he was in the process of having his attorney help him to give his parental rights to T.S. to an uncle. H.S. was also hoping to sign over her parental rights to E.N. to Father’s uncle. According to Father, if he and E.N. signed over their parental rights to their children to Father’s uncle, DCS would close their respective cases and would no longer be in their lives.

[20] Therapist Vargas noted that Father’s responses in the assessment revealed that Father “would engage in physical abuse and would get easily irritated with children.” (Tr. Vol. 2 at 126). Therapist Vargas noted that these results were

concerning given the reason that the CHINS case had been opened. As a result of the assessment, Therapist Vargas made the following recommendations to Father: (1) attend individual therapy to focus on sobriety and learning healthy coping skills to manage stress and decrease anger; (2) attend a DV/MRT program; (3) participate in AA/NA groups for additional support in maintaining sobriety and accountability; (4) obtain a skills coach to help apply any skills learned in therapy; (5) attend a parenting class to help learn what behaviors are appropriate when interacting with children; (6) attend an anger management class; and (7) consult with a psychiatrist to determine whether medication would be helpful. Further, Therapist Vargas made a “clear request that [Father] . . . not engage with the children without being supervised at anytime until all the recommendations [had been] completed.” (Tr. Vol. 2 at 126).

[21] In January 2023, FCM Guin and CASA Megan Swaidner (“CASA Swaidner”) met with Father at the county jail to discuss Father’s participation in services when he was released from incarceration the following month. Father told FCM Guin and CASA Swaidner that he would not be participating in any services and that he had his own plan, which was confidential. Father then called FCM Guin “a lot of names” and banged on the table. (Tr. Vol. 2 at 113).

[22] In February 2023, DCS filed a petition to terminate Father’s parental relationship with T.S. Also, in February 2023, Father was released from incarceration and was placed on probation. One of the terms of his probation was that he complete a DV/MRT program. Father began participating in a

DV/MRT program because he knew that he would go back to jail if he did not complete it.

At the end of May 2023, Father attended a substance abuse assessment. Following the assessment, the assessor made the following recommendations to Father: (1) attend individual therapy; (2) consult with a psychiatrist for medication management; (3) attend a domestic violence class; (4) attend an MRT program; and (5) attend a substance abuse group.

[23] At the beginning of the July 2023 termination hearing, Mother told the trial court that she had signed a consent to T.S.'s adoption by her foster parents. When the trial court asked Mother why she wanted the foster parents to adopt T.S., Mother responded, "I feel like she would have better benefits there." (Tr. Vol. 2 at 22). Thereafter, the trial court asked Mother if she had been promised visitation with T.S. following the adoption, and Mother responded that she had not. When the trial court further asked Mother if anybody had forced her, threatened her, or placed her in fear causing her to sign the adoption consent, Mother responded, "No." (Tr. Vol. 2 at 28). The trial court also asked Mother if she was freely and voluntarily consenting to T.S.'s adoption, and Mother responded, "Yes." (Tr. Vol. 2 at 28). Lastly, the trial court asked Mother if she believed that the adoption was in T.S.'s best interest, and Mother responded that she did. The trial court excused Mother from the hearing, and there was no testimony at the hearing regarding Mother's involvement in the CHINS proceedings or her participation in services.

[24] The rest of the termination hearing focused on Father. FCM Guin testified that Father had not been fully compliant with services. FCM Guin further testified that she would not recommend returning T.S. to Father “[b]ecause [T.S.] would not be safe there. [Father] has not shown a lot of improvement in his services to be able to manage [T.S.] and her behaviors in an effective way.” (Tr. Vol. 2 at 104). FCM Guin further testified that T.S. had been out of Father’s home for nearly two years and that it was time for her to have the permanency that she deserved.

[25] CASA Swaidner testified and recommended terminating Father’s parental rights because of Father’s “lack of meaningful engagement in therapies and his lack of meaningful engagements in the case[.]” (Tr. Vol. 2 at 177). CASA Swaidner shared her concern that T.S. would not be safe with Father if she were to act out and Father could not control his anger. CASA Swaidner also recommended foster parent adoption because the “amount of patience it takes to be able to meet the needs of a child like [T.S.] is essential and [foster parents have] not only shown that, but they have also taken part in services to help them better parent [T.S.]” (Tr. Vol. 2 at 178-79).

[26] In addition, T.S.’s foster father testified that T.S. needed “structure and stability” and someone “who can work with her on a daily basis” to keep her emotions in check. (Tr. Vol. 2 at 60). According to foster father, T.S. participated in speech therapy, occupational therapy, and play therapy/counseling. T.S.’s therapist testified that T.S.’s biggest needs were stability and predictability.

[27] Father also testified at the termination hearing. Specifically, Father testified that he did not know why T.S. had been removed from his care in October 2021 when it was E.N. who had had the bruises. Father acknowledged that he had not completed DCS services. Father testified that he had attended individual counseling in the past but that he had stopped attending the sessions because counseling had not helped him. According to Father, “[n]o therapist c[ould] help [him]. They don’t help everybody, they are not miracle workers.” (Tr. Vol. 2 at 48). Although Father testified that the individual counseling had not helped him, he also testified that he had completed the DV/MRT program for probation just five days before the termination hearing and that he no longer had anger issues. He also testified that he was unable to participate in any further DCS services at that time because he worked twelve hours each day, sometimes until 10:00 p.m. Father further testified that although his work supervisor had accommodated his work schedule so that he could participate in the DV/MRT program, his supervisor was no longer willing to accommodate his schedule so that he could participate in additional DCS services. Father further acknowledged that he had not seen T.S. in one year.

[28] Two of Father’s uncles and H.S., who had married Father, all testified that Father no longer got as angry as he had in the past. Father’s work supervisor, Robert Swanson (“Swanson”) testified that Father was a hard worker. Swanson further testified that the work day typically ended at 3:00 p.m. but that sometimes the day went a little longer. However, according to Swanson, his employees never worked until 10:00 p.m. Swanson further testified that he

would accommodate Father's work schedule so that Father could participate in DCS services.

[29] After the July 2023 termination hearing, but before the trial court had issued an order in the termination case, Mother filed a motion to withdraw her consent to T.S.'s adoption. The trial court held a hearing on Mother's motion in August 2023. At the hearing, Mother's counsel asked Mother why she had come to believe that it was no longer in T.S.'s best interest to be adopted. Mother responded, "[b]ecause I want to try to . . . do [the] motion to get full custody of her." (Tr. Vol. 2 at 203). Mother's counsel then asked Mother if there had been a change in circumstances with her other children. Specifically, Mother had a one-year-old daughter who was in DCS's care and a two-year-old son who was in the custody of his father. Mother responded that she was "supposed to be going to court either sometime [that] week or [the following] week to get full custody of [her] youngest daughter and then [she was] go[ing] to court in a couple of weeks to get fifty/fifty custody of [her] son." (Mother's Tr. Vol. 2 at 203).

[30] DCS's counsel told the trial court that both of these children had pending CHINS cases. Specifically, DCS's counsel explained that the daughter's case had ended with a CHINS adjudication and that the daughter had been placed in foster care with T.S. According to DCS's counsel, Mother had not attended the CHINS dispositional hearing in her youngest daughter's case. DCS's counsel further explained that following a CHINS factfinding hearing, Mother's son had been placed in the custody of his father. DCS asked the trial court to take

judicial notice of the two CHINS cases. The trial court took judicial notice of the cases without any objection from Mother.

[31] At the end of the hearing, the following colloquy ensued between Mother's counsel and the trial court:

Mother's Counsel: [Y]our Honor, we would ask that you consider the evidence presented here today and find that it is not in the best interest of [T.S.] that she be adopted and that Mother have the opportunity to seek custody if that is what she wants to do in the family law case.

Trial Court: I understand that-

Mother's Counsel: Her family law case.

Trial Court: -her position is to as to the best interest requirement of the statute, the best interest is that she wants full custody?

Mother's Counsel: Yes, your Honor.

Trial Court: And that is the only basis and there's nothing about fraud or duress or anything?

Mother's Counsel: No your Honor.

(Mother's Tr. Vol. 2 at 206-07).

[32] In September 2023, the trial court issued an order denying Mother's motion to withdraw her consent to T.S.'s adoption. The trial court specifically found that "[t]here was no evidence in the record that [Mother] was under duress, impaired, or in any way coerced at the time she executed her consent." (Mother's App. Vol. 2 at 6). The trial court further found that Mother's stated reason for filing her motion to withdraw her consent to T.S.'s adoption was that

she wanted full custody of T.S. The trial court also found that Mother had not given any other reasons. In addition, the trial court found that Mother had not met her burden of proving by clear and convincing evidence that she was acting in T.S.'s best interest when requesting to withdraw her consent to the adoption.

[33] Also, in September 2023, the trial court issued a detailed fourteen-page order terminating Father's parental relationship with T.S. The trial court specifically found, in relevant part, as follows:

32. There is a reasonable probability that the conditions that resulted in [T.S.]'s removal or the reasons for placement outside the parent's home will not be remedied in that while Father has shown some improvement in holding his temper in recent months, he continues to refuse to take accountability for [the] effects that his angry reactions have [had] on those around him or acknowledge that his anger poses a threat to the well-being of a child in his care. Further, he has been in and out of the child's life through custody issues and incarceration, so he has not been a consistent, positive presence in the child's life.

(Father's App. Vol. 2 at 22).

[34] Father now appeals the termination of his parental relationship with T.S., and Mother appeals the trial court's denial of her motion to withdraw her consent to T.S.'s adoption.

Decision

[35] Father argues that there is insufficient evidence to support the termination of his parental relationship with T.S., and Mother argues that the trial erred when it

denied her motion to withdraw her consent to T.S.'s adoption. We address each of these contentions in turn.

1. Termination of Father's Parental Relationship with T.S.

[36] Father argues that there is insufficient evidence to support the termination of his parental relationship with T.S. The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. *K.T.K. v. Indiana Department of Child Services, Dearborn County Offices*, 989 N.E.2d 1225, 1230 (Ind. 2013). However, the law provides for termination of that right when parents are unwilling or unable to meet their parental responsibilities. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents but to protect their children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

[37] When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *K.T.K.*, 989 N.E.2d at 1229. Rather, we consider only the evidence and reasonable inferences that support the judgment. *Id.* Where a trial court has entered findings of fact and conclusions thereon, we will not set aside the trial court's findings or judgment unless clearly erroneous. *Id.* (citing Ind. Trial Rule 52(A)). In determining whether the court's decision to terminate the parent-child relationship is clearly erroneous, we review the trial court's judgment to determine whether the

evidence clearly and convincingly supports the findings and the findings clearly and convincingly support the judgment. *Id.* at 1229-30.

[38] A petition to terminate parental rights must allege:

(A) that one (1) of the following is true:

(i) The child has been removed from the parent for at least six (6) months under a dispositional decree.

* * * * *

(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). DCS must prove the alleged circumstances by clear and convincing evidence. *K.T.K.*, 989 N.E.2d at 1231.

[39] In addition, as a general rule, appellate courts grant latitude and deference to trial courts in family law matters. *Matter of D.P.*, 72 N.E.3d 976, 980 (Ind. Ct. App. 2017). “This deference recognizes a trial court’s unique ability to see the witnesses, observe their demeanor, and scrutinize their testimony, as opposed to this court[] only being able to review a cold transcript of the record.” *Id.*

[40] Here, Father argues that DCS failed to prove by clear and convincing evidence that: (1) there is a reasonable probability that the conditions that resulted in T.S.’s removal or the reasons for her placement outside the home will not be remedied; and (2) a continuation of the parent-child relationship poses a threat to T.S.’s well-being.

[41] However, we note that INDIANA CODE § 31-35-2-4(b)(2)(B) is written in the disjunctive. Therefore, DCS is required to establish by clear and convincing evidence only one of the three requirements of subsection (B). *In re A.K.*, 924 N.E.2d 212, 220 (Ind. Ct. App. 2010), *trans. dismissed*. We therefore discuss only whether there is a reasonable probability that the conditions that resulted in T.S.’s removal or the reasons for her placement outside the home will not be remedied.

[42] In determining whether the conditions that resulted in a child’s removal or placement outside the home will not be remedied, we engage in a two-step analysis. *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014). We first identify the conditions that led to removal or placement outside the home and then determine whether there is a reasonable probability that those conditions will

not be remedied. *Id.* The second step requires a trial court to judge a parent's fitness at the time of the termination proceeding, taking into consideration evidence of changed conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* Habitual conduct may include a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and a lack of adequate housing and employment. *A.D.S. v. Indiana Department of Child Services*, 987 N.E.2d 1150, 1157 (Ind. Ct. App. 2013), *trans. denied*. The trial court may also consider services offered to the parent by DCS and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Requiring a trial court to give due regard to changed conditions does not preclude them from finding that a parent's past behavior is the best predictor of his future behavior. *E.M.*, 4 N.E.3d at 643.

Here, our review of the evidence reveals that T.S. was removed from Father because of domestic violence issues in the home related to Father's inability to control his anger. Father acknowledged at the termination hearing that he had not completed DCS services. These services, which were set forth in the CHINS dispositional order, included: (1) keep all appointments with service providers; (2) participate in a parenting assessment and successfully complete all recommendations; (3) participate in a substance abuse assessment and successfully complete all recommendations; (4) participate in a psychological evaluation and successfully complete all recommendations; (5) participate in

home-based family services; (6) participate in Fatherhood Engagement services; and (7) participate in individual counseling. Therapist Vargas, who completed Father's psychological assessment was so concerned about the results of Father's tests that she made a clear request that Father not engage with children without being supervised until he had completed *all* recommendations. Father has completed none of these recommendations. Further, at the termination hearing, Father testified that he would not be able to complete any additional DCS services because he sometimes worked until 10:00 p.m. and his work supervisor would not accommodate his schedule to allow him to participate in services. However, Father's work supervisor subsequently testified that his employees did not work until 10:00 p.m. and that he would be willing to accommodate Father's work schedule so that he could participate in DCS services. We recognize that Father completed the DV/MRT program. However, completion of this program was a condition of Father's probation, and Father knew that he would have had to return to jail if he had not completed it. This evidence supports the trial court's conclusion that there is a reasonable probability that the conditions that resulted in T.S.'s removal or the reasons for placement outside the home will not be remedied. As a result, there is sufficient evidence to support the termination of Father's parental relationship with T.S.

2. Denial of Mother's Motion to Withdraw her Consent to T.S.'s Adoption

Mother argues that the trial court erred when it denied her motion to withdraw her consent to T.S.'s adoption.² A parent who has previously executed a consent to an adoption can withdraw that consent by filing a motion with the trial court. *In re Adoption of S.P.*, 172 N.E.3d 344, 350-51 (Ind. Ct. App. 2021) (citing IND. CODE § 31-19-10-1(c)). However, there are limits on a parent's ability to withdraw her consent to the adoption of her child. *S.P.*, 172 N.E.3d at 351.

INDIANA CODE § 31-19-10-3 provides, in relevant part, as follows:

- (a) A consent to adoption may be withdrawn not later than fifteen (15) days after consent to adoption is signed if:
 - (1) the court finds, after notice and opportunity to be heard afforded to the petitioner for adoption, that

² Mother also argues that the trial court abused its discretion by taking judicial notice of the two CHINS cases involving her other children. Mother has waived appellate review of this issue because she failed to object at the hearing to the trial court taking judicial notice of the two CHINS cases. *See In re Marriage of Harpenau*, 17 N.E.3d 342, 349 (Ind. Ct. App. 2014) (explaining that a mother's failure to object at the hearing to the trial court taking judicial notice of a document resulted in waiver of the issue on appeal). Waiver notwithstanding, we find no error. Indiana Evidence Rule 201(a)(2)(C) provides, in relevant part, that a court may take judicial notice of "the existence of . . . records of a court of this state." Further, we have previously explained that "[u]nless principles of claim preclusion apply, judicial notice should be limited to the fact of the record's existence, rather than to any facts found or alleged within the record of another case." *In re P.B.*, 199 N.E.3d 790, 797 (Ind. Ct. App. 2022), *trans. denied*. To the extent Mother argues that the trial court's order denying her motion to withdraw her consent to T.S.'s adoption relied on facts found or alleged within those CHINS cases, she is mistaken. Although the trial court's order states that: (1) the one-year-old child who was a subject of one of the CHINS proceedings was currently in foster care; and (2) the three-year-old child who was the subject of the other CHINS proceeding had been placed with the child's father, Mother testified to these facts at the hearing. Further, to the extent that the trial court's order stated that Mother did not appear for the CHINS dispositional hearing in her younger daughter's case, DCS's counsel provided this information to the trial court during the hearing on Mother's motion to withdraw her consent to T.S.'s adoption. We agree with the DCS that the trial court did not incorporate any "details from the CHINS proceedings nor any facts contained in the pleadings. As such, the trial court's use of the judicially noticed information did not extend beyond permissible bounds." (DCS's Br. 31). *See P.B.*, 199 N.E.3d at 797 (finding that the trial court's use of judicially noticed information did not go beyond permissible bounds).

the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and

(2) the court orders the withdrawal.

The parent seeking to withdraw her consent to the adoption bears the burden of proof by clear and convincing evidence. *S.P.*, 172 N.E.3d at 351 (citing I.C. § 31-19-10-0.5).

Where a ruling is entered against the party with the burden of proof, that party appeals from a negative judgment. *Id.* at 351. A party appealing from a negative judgment must show that the evidence points unerringly to a conclusion different from that reached by the trial court. *Id.* We will reverse a negative judgment only if the trial court's decision is contrary to law. *Id.* In determining whether a negative judgment is contrary to law, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* Rather, we consider only the evidence most favorable to the prevailing party together with all reasonable inferences flowing therefrom. *Id.* Similarly, in decisions relating to adoptions, we will presume that the trial court's decision is correct, and we will not disturb the trial court's ruling unless the evidence leads to only one conclusion and the trial court reached the opposite conclusion. *Id.*

Here, Mother appears to argue that the trial court erred in denying her motion to withdraw her consent to T.S.'s adoption based on her assertion that allowing her to withdraw her consent would be in T.S.'s best interest. "[I]n order to meet the burden of proving that allowing withdrawal of consent to adoption would be in the [child's] best interest[], the parent[] seeking to withdraw

consent must specify precisely why it is in the child's best interest to permit [her] to withdraw [her] consent." *Id.* at 353 (citing *Bell v. A.R.H.*, 654 N.E.2d 29, 34 (Ind. Ct. App. 1995)).

In the *Bell* case, the biological mother signed consents to the adoption of her four oldest children, and they were placed with a prospective adoptive couple. Several months later, the mother filed a petition to withdraw the consents. The trial court denied the petition, and the mother appealed. With respect to whether the mother had been acting in the best interest of her children, she argued that "no one [had] said anything negative about her, and all of her witnesses [had] testified that she was a good mother who loves her children." *Bell*, 654 N.E.2d at 34 (internal quotations omitted). We held that in order to meet her burden of proof, the mother had been required to show more. *Id.*

Our review of the record in this case reveals that Mother alleged even less than the mother in *Bell*. Mother simply has not alleged with specificity why the withdrawal of her consent to T.S.'s adoption would be in T.S.'s best interest. Rather, both Mother and her counsel simply told the trial court that Mother wanted to withdraw her consent to T.S.'s adoption because Mother wanted to pursue full custody of T.S. Without a more specific explanation, we fail to see how Mother's pursuit of full custody of T.S. would be in T.S.'s best interest. We further note that even if the trial court had granted Mother's motion to withdraw her consent to the adoption, T.S. would not necessarily have been returned to Mother. DCS's petition to terminate Mother's parental relationship with T.S. was pending at the time Mother consented to T.S.'s adoption. The

petition to terminate was based on Mother’s alleged lack of compliance with the CHINS dispositional order. Thus, had the trial court granted Mother’s motion to withdraw her consent, T.S., who had been involved in the CHINS proceedings for nearly two years, would have “remain[ed] in limbo for an indeterminate amount of time while the process play[ed] out again.” *S.P.*, 172 N.E.2d at 354. “As such action would unnecessarily prolong the upheaval of [T.S.’s life], [Mother] has not proven by clear and convincing evidence that [s]he [was] acting in [T.S.’s] best interest[] in seeking to withdraw [her] consent[]” to T.S.’s adoption. *Id.* Accordingly, we affirm the trial court’s denial of Mother’s motion to withdraw her consent to T.S.’s adoption.

[43] Affirmed.

Bailey, J., and Crone, J., concur.

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