

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

In Re the Termination of the Parent-Child Relationship  
of G.O. (Minor Child) and S.O., Sr. (Father)

S.O., Sr. (Father),

*Appellant-Respondent*

v.

Indiana Department of Child Services,

*Appellee-Petitioner*

Kids' Voice of Indiana,

*Appellee-Guardian Ad Litem*



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April 8, 2024

Court of Appeals Case No.  
23A-JT-2527

Appeal from the Marion Superior Court

The Honorable Danielle Gaughan, Judge  
The Honorable Kelly Scanlan, Magistrate

**Memorandum Decision by Judge Vaidik**  
Judges May and Kenworthy concur.

**Vaidik, Judge.**

## Case Summary

- [1] S.O., Sr. (“Father”) appeals the termination of his parental rights to his child, G.O. (“Child”). We affirm.

## Facts and Procedural History

- [2] Father and K.C. (“Mother”) (collectively, “Parents”) are the biological parents of Child, born in March 2016. Mother’s parental rights to Child were also terminated, but she does not participate in this appeal. In addition to Child, Parents have three adult children: J.O., K.O., and S.O., Jr. When the Department of Child Services (DCS) first became involved with the family, J.O. was a minor, but shortly thereafter she turned eighteen and “aged out of the CHINS case.” Tr. p. 67. Thus, this case relates only to Father’s parental rights to Child.
- [3] In March 2021, DCS removed Child from Parents due to illegal drug use and domestic violence in the home. A few days later, DCS filed a petition alleging Child was in need of services (CHINS). Child was placed with his oldest sister,

K.O., where he has since remained. At the time of placement, K.O. was twenty and had moved out of the family home several months prior.

[4] The next month, DCS referred Child to Meghann Banks of Connections, Inc. to assess his emotional needs and developmental delays. Banks learned that Child, then five, wasn't potty-trained and struggled to eat "typical food" because "[h]is meals had consisted of ketchup and barbecue sauce packets." *Id.* at 14. He was hypervigilant, had trouble sleeping, and didn't know basic shapes, colors, numbers, or letters well. Banks had weekly therapy sessions with Child and worked with K.O. on strategies to address Child's behavioral and developmental issues.

[5] Family Case Manager (FCM) Melissa Vortice met with Parents, and they said they were willing to complete substance-abuse assessments and provide drug screens. FCM Vortice put in referrals for these services as well as a domestic-violence referral, but Parents never engaged. She also referred Father for home-based case management, but he didn't participate. Parents had two visits with Child at the beginning of the CHINS case, but Child "act[ed] out" and had "meltdowns" during the visits, so FCM Vortice referred the family for therapeutic visitation. *Id.* at 57, 66. Parents never attended therapeutic visitation, and the referral was eventually canceled due to lack of engagement. FCM Vortice later put in another referral for therapeutic visitation with a different provider, but Parents were again unsuccessfully discharged for lack of engagement.

[6] In August 2021, the trial court held a CHINS fact-finding hearing over the span of two days. Parents appeared by telephone the first day but failed to appear and couldn't be contacted the second day. Finding that Parents' noncompliance had affected Child and that Child was endangered because of Parents' inability to provide a safe, stable, and appropriate living environment free from substance abuse and domestic violence, the trial court found Child to be a CHINS.

[7] The trial court held a dispositional hearing in September and issued a dispositional decree and order of parental participation after a review hearing in December. At the review hearing, the court noted that Parents had completed substance-abuse evaluations but weren't truthful in their responses, hadn't visited Child, and had each picked up a new criminal charge since the last hearing. Father had been charged with Level 5 felony possession of cocaine. The parental-participation order required Father to complete a substance-abuse assessment and any resulting recommendations, submit to random drug and alcohol screens, attend visitation, complete a domestic-violence intake and any resulting recommendations, and participate in Father Engagement. He was referred for random drug screens after his substance-abuse assessment, but he didn't provide any screens to DCS. He never completed the domestic-violence intake or Father Engagement.

[8] In January 2022, while out on bond in the cocaine-possession case, Father was charged in Shelby County with Level 6 felony possession of a narcotic drug and Level 6 felony possession of methamphetamine. The next month, he was

booked into the Marion County jail and charged with Class C misdemeanor possession of paraphernalia. Father remained in jail for six weeks and missed the permanency hearing in March. Later that month, Father entered into a plea agreement with the State under which he pled guilty to possession of cocaine and the State dismissed the paraphernalia charge. Father was sentenced to two years on community corrections and one year of probation.

[9] A permanency hearing was held in July, after which the trial court changed the permanency plan from reunification to adoption. Father missed the hearing because he'd been arrested the day before for an alleged drug-related incident (charges were filed but later dismissed). The following week, DCS petitioned to terminate Parents' parental rights to Child.

[10] In October, Father pled guilty to Level 6 felony methamphetamine possession in the Shelby County case and was sentenced to 341 days suspended to probation, to be served on home detention. That same month, he started rehabilitation and drug treatment with the Indianapolis Comprehensive Treatment Center. Father indicated that he wanted to participate in services, and FCM Vortice ensured service referrals were open for him.

[11] Mediation was scheduled in the termination case for January 2023 but was unsuccessful because Parents didn't attend or participate. FCM Vortice and Father scheduled a child-and-family team meeting for February, but Father canceled the day of the meeting. He never attended any child-and-family team meetings throughout the proceedings.

[12] In May, Father was charged with four counts of Level 5 felony robbery.<sup>1</sup> Subsequently, a notice of violation of community corrections was filed in the cocaine-possession case, and a petition to revoke his probation was filed in the Shelby County case.<sup>2</sup> Father was held in the Marion County jail, where he remained throughout the rest of the termination proceedings.

[13] A termination hearing was held in August. Banks testified that when she first met Child, he was developmentally behind for a five-year-old, but K.O. immediately began addressing his behavioral, educational, and medical needs. Banks said she tried to contact Parents to engage them in services but was unsuccessful. She had concerns for Child's safety if he were to return to Parents' care because of their lack of engagement and the allegations of domestic violence and addiction in the home. K.O. also testified about Child's developmental delays and behavioral issues when he was first placed with her. She explained that, in addition to being educationally behind, Child tried to stay awake all day and night and would punch and scratch himself when he was frustrated. She also said that she'd last been at Parents' house in December 2020, where she observed dirty dishes everywhere, bags of dirty laundry, dog feces on the floor, ripped-up carpet, broken furniture, and cockroaches.

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<sup>1</sup> In October 2023, Father pled guilty to all four counts of Level 5 felony robbery and was sentenced to three years on community corrections and six years of probation.

<sup>2</sup> On October 24, 2023, Father admitted to the violation in the cocaine-possession case and received a time-served sentence. Father also admitted to the violation in the Shelby County case, and on March 7, 2024, the trial court ordered him to serve the remaining eight months of his sentence in the county jail.

[14] FCM Vortice testified that the referrals for random drug screens and a domestic-violence intake for Father were still open and that services had been available to Parents throughout the CHINS and termination proceedings. She explained that Parents had issues maintaining consistent housing and have had three different addresses since the CHINS proceedings began. She said Father never contacted her when he was out of jail to get help obtaining stable housing and that home-based case management or Father Engagement could've helped him do so if he'd participated. She testified that termination is in Child's best interests due to Parents' lack of involvement and that Child has a right to have an active parent free from substance-abuse and domestic-violence issues. Alexia Peterson, Child's guardian ad litem (GAL), also testified that termination is in Child's best interests because Parents had enough time to engage in services and address these issues, and Child deserves permanency.

[15] Father testified that he'd been in rehabilitation and drug treatment at the Indianapolis Comprehensive Treatment Center since October 2022. He explained that they set a plan for methadone treatment, drug screens, and group and individual counseling but didn't say which, if any, of these services he'd actually completed. He noted that now that he was incarcerated, the only service he could do was methadone treatment. He admitted he'd had no contact with DCS since February 2022 and hadn't completed a domestic-violence assessment or any other services DCS referred. However, he said he obtained services on his own through Mary Riggs Neighborhood Community Center, including SNAP benefits, health insurance, and transportation to and from drug

treatment. He explained he had trouble complying with services in the past because he didn't have transportation, but he was willing to comply with services going forward and didn't believe transportation would be an issue. He said he had plans for employment and to live with his sister after being released from incarceration.

[16] In September, the trial court issued an order terminating Parents' rights to Child.

[17] Father now appeals.

## Discussion and Decision

[18] Father argues the evidence presented at the termination hearing is insufficient to prove the statutory requirements for termination. When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility. *In re K.T.K.*, 989 N.E.2d 1225, 1229 (Ind. 2013). Rather, we consider only the evidence and reasonable inferences most favorable to the judgment of the trial court. *Id.* When a trial court has entered findings of fact and conclusions of law, we will not set aside the court's findings or judgment unless clearly erroneous. *Id.* To determine whether a judgment terminating parental rights is clearly erroneous, we review whether the evidence supports the trial court's findings and whether the findings support the judgment. *In re V.A.*, 51 N.E.3d 1140, 1143 (Ind. 2016).

[19] A petition to terminate parental rights must allege, among other things:



(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. If the trial court finds the allegations are true, the court "shall terminate the parent-child relationship." I.C. § 31-35-2-8(a).

### **I. The trial court's findings of fact are not clearly erroneous**

[20] Father challenges many of the trial court's findings of fact. Findings are clearly erroneous only when the record contains no evidence 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*.

[21] Father frames his many challenges in various ways, claiming some findings are “erroneous,” Appellant’s Br. pp. 27, 32, others are “misleading,” *see id.* at 27-29, 31, and others “conflict[]” with the evidence, *see id.* at 27-29, 32, 36. But in most of these arguments, Father merely points to contradictory evidence presented at the termination hearing.<sup>3</sup> To this end, Father is essentially asking us to reweigh the evidence, which we do not do. *See K.T.K.*, 989 N.E.2d at 1229. However, Father raises several challenges on other grounds, which we address in turn.

[22] Father argues that Findings 12 and 16 “should be disregarded” because they’re “based upon hearsay allegations” contained in documents from the underlying CHINS case. Appellant’s Br. p. 17. But these documents were admitted by stipulation at the termination hearing, *see* Tr. p. 5, and Father doesn’t challenge their admission on appeal. And in any event, the court doesn’t say in these findings that the allegations in the CHINS documents are true; Finding 12 merely restates what DCS alleged in the CHINS petition, and Finding 16

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<sup>3</sup> Several of Father’s challenges rely on FCM Vortice’s testimony that substance abuse was “not as much” of a safety concern because Father was incarcerated and that “domestic violence is not an issue.” Tr. pp. 68-69. FCM Vortice’s full statement about domestic violence was that “Domestic Violence Services would educate the parents on how to best resolve their issues. So domestic violence is not an issue. But it would eliminate that [sic] any allegations of domestic violence in their home through their participation.” *Id.* at 69. DCS argues Father has taken this testimony out of context, contending the statement about substance abuse “is an opinion about how accessible drugs are in the county jails, not a wholesale opinion Father had remedied his substance abuse,” and the “period in between the word ‘issues’ and ‘so’” in the statement about domestic violence is a “typographical error.” Appellee’s Br. pp. 18-19, 24. We agree with Father that DCS can’t use its appellate brief to assert changes to the testimony. However, FCM Vortice also testified that Father hadn’t shown he’d resolved his substance-abuse or domestic-violence issues. *See* Tr. pp. 82, 85. Because the trial court is in a unique position to assess the evidence and witness credibility, *see In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011), it was the trial court’s role to interpret the testimony and make its findings accordingly.

restates the findings in the CHINS fact-finding order. There is nothing erroneous about these findings.

[23] Father next challenges Finding 15:

By its order issued August 27, 2021, the Court adjudicated the Child and J.O. to be minor children in need of services. The Court found that the Child and J.O. were endangered as a result of Mother and Father's inability to provide them with a safe, stable, and appropriate living environment free from substance abuse and domestic violence, and that they were in need of services that they were unlikely to receive without the coercive intervention of the Court.

Appellant's App. Vol. II p. 20. Father argues the statement that the court adjudicated J.O. to be a CHINS is erroneous because J.O. had "aged-out." Appellant's Br. p. 27. But the court found both Child and J.O. to be CHINS on August 27, 2021, and J.O. didn't turn eighteen until August 30. *See* Ex. 7. Father also claims the portion about domestic violence "is misleading in that the order does not indicate that at the time of the termination trial, domestic violence was no longer considered an issue in the matter." Appellant's Br. p. 27. Finding 15 is merely a restatement of the reasons for the CHINS adjudication, so the state of the issues at the time of the termination hearing two years later has no bearing.

[24] Father also contends Finding 36 is misleading. This finding states, "Ms. Banks has made telephone calls and sent emails and text messages to Mother and has not received any response from her. She also attempted to contact Father,

without success.” Appellant’s App. Vol. II p. 23. This is not misleading. Banks testified that she tried to contact Father through Mother because she only had Mother’s contact information, but she was unsuccessful in reaching him. *See* Tr. p. 23.

[25] Father has failed to show that the trial court’s findings are clearly erroneous.<sup>4</sup>

## **II. The trial court did not err in concluding the statutory requirements for termination were satisfied**

### **A. Conditions Remedied**

[26] Father next challenges the trial court’s determination that there is a reasonable probability the conditions resulting in Child’s removal and continued placement outside the home will not be remedied. In making such a determination, the trial court engages in a two-step analysis. First, the court must ascertain what conditions led to the child’s placement and retention outside the home. *K.T.K.*, 989 N.E.2d at 1231. Second, the court must determine whether there is a reasonable probability those conditions will not be remedied. *Id.* The “trial court must consider a parent’s habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation.” *Id.* (quotation omitted).

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<sup>4</sup> Father challenges several more findings, but they are really challenges to the trial court’s conclusions, which we address in the next section.

[27] Child was removed and remained outside the home due to Parents' substance abuse and domestic violence. Father has not shown an ability or willingness to remedy these issues. While he completed a substance-abuse assessment, he failed to submit to random drug screens as recommended, even though the drug-screen referral remained open throughout the CHINS and termination proceedings. The referral for a domestic-violence intake also remained open, but he never completed it. He also stopped attending visitation after the first month, never participated in Father Engagement, and didn't attend any child-and-family team meetings. Twice during the CHINS proceedings, Father was charged with drug-related offenses and has been in and out of jail and on home detention. Additionally, his home detention in Shelby County was recently revoked, and he will be incarcerated for eight more months.

[28] Despite his noncompliance with the parental-participation order and his cycle of criminal activity, Father contends his pursuit of services through Mary Riggs, participation in rehabilitation and drug treatment at the Indianapolis Comprehensive Treatment Center, and plans for housing and employment after he's released from incarceration indicate that the conditions resulting in Child's removal are likely to be remedied. But this is merely a request for us to reweigh the evidence, which we will not do. *A.D.S.*, 987 N.E.2d at 1157-58. The trial court was within its discretion to give more weight to Father's continued failure to address his history of substance abuse and domestic violence than to his more recent engagement in services. See *In re A.J.*, 881 N.E.2d 706, 716 (Ind Ct. App. 2008), *trans. denied.*; *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) ("Requiring

trial courts to give due regard to changed conditions does not preclude them from finding that parents' past behavior is the best predictor of their future behavior.”). The evidence supports the court's conclusion that there is a reasonable probability Father will not remedy the conditions that resulted in Child's removal and continued placement outside the home.<sup>5</sup>

## **B. Best Interests**

[29] Father also challenges the trial court's conclusion that termination is in Child's best interests. In determining whether termination is in the best interests of a child, the trial court must look to the totality of the evidence. *In re Ma.H.*, 134 N.E.3d 41, 49 (Ind. 2019), *reh'g denied*. The court must subordinate the interests of the parents to those of the child. *K.T.K.*, 989 N.E.2d at 1230. Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* at 1235. Additionally, a child's need for permanency is a “central consideration” in determining the best interests of a child. *Id.* “Indeed, children cannot wait indefinitely for their parents to work toward preservation or reunification.” *Ma.H.*, 134 N.E.3d at 49 (quotation omitted). We have previously held that the recommendation by both the case manager and child advocate to terminate parental rights, in addition to

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<sup>5</sup> Father also challenges the trial court's conclusion that there is a reasonable probability continuation of the parent-child relationship poses a threat to Child's well-being. But because we affirm the trial court's conclusion that there is a reasonable probability Father will not remedy the conditions resulting in Child's removal and continued placement outside the home, we need not address this alternate conclusion. *See In re A.G.*, 45 N.E.3d 471, 478 (Ind. Ct. App. 2015) (explaining Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires trial courts to find only one of the three provisions has been established by clear and convincing evidence), *trans. denied*.

evidence that 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. *A.D.S.*, 987 N.E.2d at 1158.

[30] Here, FCM Vortice and GAL Peterson both testified that termination is in Child's best interests. And as noted above, Father has not shown an ability to provide a stable, drug-free home for Child. Father's issues with substance abuse have not been remedied and pose a safety risk to Child if he were returned to Father's care. *See In re A.S.*, 17 N.E.3d 994, 1006 (Ind. Ct. App. 2014) (finding termination of parental rights in children's best interests where parents did not address their substance-abuse issues or complete recommended services during the two-year case), *trans. denied*. While this evidence alone is sufficient to support the trial court's conclusion, permanency is a central consideration in determining Child's best interests. Child, now eight, has been removed from Father's care for three years, and Father hasn't seen him since April 2021. Since then, Child has lived with his sister, K.O., to whom he is bonded and who wishes to adopt him. Although Father expressed interest in parenting Child and participating in services after he is released from incarceration, the trial court was not required to wait on him any longer. *See Ma.H.*, 134 N.E.3d at 49.

[31] For these reasons, we conclude the totality of the evidence supports the trial court's determination that termination of Father's parental rights is in Child's best interests.

[32] **Affirmed.**

May, J., and Kenworthy, J., concur.

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