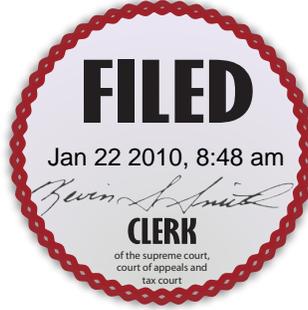


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

**THOMAS C. ALLEN**  
Fort Wayne, Indiana

**ROBERT J. HENKE, I.D.**  
DCS Central Administration  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF S.F., J.F., AND D.D., )

AND )

M.F. (father of S.F. & J.F.) & T.D.F. (mother of )  
D.D.), )

Appellants-Respondents, )

vs. )

No. 02A03-0909-JV-404 )

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee-Petitioner. )

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Charles F. Pratt, Judge  
Cause Nos. 02D07-0607-JT-146 & 147(S.F. & J.F.); 02D07-0803-JT-86

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**January 22, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

## **VAIDIK, Judge**

### **Case Summary**

Michael F. (“Father”) and Tabitha D.F. (“Mother”) jointly appeal the involuntary termination of their parental rights to their respective children. Concluding that the Indiana Department of Child Services, Allen County (“ACDCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

### **Facts and Procedural History**

Father is the biological father of J.F., born on October 13, 1997, and S.F., born on January 1, 1999. Mother is the biological mother of D.D., born on January 29, 2003.<sup>1</sup> The evidence most favorable to the trial court’s judgment reveals that Father and Mother each had substantial, independent histories of involvement with the Indiana Department of Child Services (“DCS”) in various counties before the events leading to the underlying termination proceedings. In 1998, before S.F.’s birth, J.F. was removed from Father’s care and adjudicated a child in need of services (“CHINS”) due to the filthy and unsafe living conditions in Father’s Adams County residence, including trash and dirty clothes strewn about the home, evidence of rodent infestation, animal feces stained carpet, urine smell permeating the residence, roaches around the sink, and marijuana discovered on the premises. Father participated in services, and J.F. was returned to Father’s care in February 1999. In February 2000, however, both J.F. and S.F. were found to be CHINS due to the filthy and unsanitary living conditions of their family home. Similarly, in 2000

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<sup>1</sup> The parental rights of D.D.’s biological father and S.F. and J.F.’s biological mother were each terminated in separate proceedings in 2007. Neither of these biological parents participates in this appeal.

and 2001 DCS removed Mother's two older children, H.R. and H.L., from her care due to the unsafe and unsanitary living conditions of Mother's residence, in addition to Mother's lack of parenting skills and admitted marijuana use. Mother failed to successfully complete services, and H.R. and H.L. were eventually placed with relatives on a permanent basis.

In 2003 Father and Mother were living together with J.F., S.F., and D.D. as a blended family, although the parents were not yet married.<sup>2</sup> During 2003 and 2004 the ACDCS substantiated at least four separate allegations of neglect and/or lack of supervision against Father and Mother. The ACDCS received yet another referral concerning the children's safety in April 2005. A subsequent investigation confirmed that the children were dirty and had head lice. In addition, one of the children had a skin rash that appeared to be scabies. The condition of the home was likewise found to be filthy and unsafe, and it was discovered that a leaky second floor sewer pipe had deposited several inches of standing liquid in the basement.

The ACDCS initially attempted to provide Father and Mother with home-based services on an informal basis, but conditions in the home did not substantially improve. In August 2005 the ACDCS filed petitions under separate cause numbers alleging S.F. and J.F. were CHINS due to the unresolved safety concerns and unsanitary living conditions of the home. Because she was living with Father, Mother was listed as a custodian in the CHINS petitions relating to S.F. and J.F. For reasons not entirely clear

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<sup>2</sup> Father and Mother were married on or about October 6, 2007.

from the record, however, the ACDCS did not file a CHINS petition relating to D.D. at this time.

In addition to the unsafe living conditions of the home, the CHINS petitions also alleged, among other things, that Father and Mother had not ensured that S.F. and J.F. were clean at all times, both children had head lice, both parents had admitted to prior marijuana use, and both parents had been involved with the DCS on previous occasions. Father and Mother admitted to these allegations, and in August 2005 S.F. and J.F. were adjudicated CHINS. The court proceeded to disposition, and both parents were ordered to complete various services as part of the court's parent participation plan. Specifically, Mother and Father were ordered to (1) maintain clean, safe, and appropriate housing at all times; (2) refrain from all criminal activity; (3) enroll and participate in home-based services through the organization SCAN; (4) successfully complete parenting classes; (5) obtain a psychological assessment at Family and Children's Services; (6) provide the children with clean and appropriate clothing at all times; and (7) cooperate with all caseworkers and successfully complete and benefit from all services or requirements in a timely manner. State's Ex. 38, Vol. 1, p. 2. Father was also specifically ordered to ensure that S.F. and J.F. receive daily baths and maintain proper, healthy hygiene. The dispositional hearing was then continued until September 14, 2005.

Despite the court's CHINS adjudication as to S.F. and J.F., all three children were initially allowed to remain in the home while the parents began receiving services. Following the continued hearing, the trial court entered another dispositional order which further directed Mother, who was primarily responsible for maintaining the house while

Father worked, to ensure that the residence, parents, and children were free of any and all infestations including lice and fleas. The court's order also indicated that S.F.'s and J.F.'s continued placement in the family home was dependent upon the parents providing proof within two weeks that all infestations had been resolved.

In late September 2005 the ACDCS took all three children into protective custody. Following a hearing, the trial court issued separate orders formally removing all three children from the home and temporarily placing them in licensed foster care as they continued to have lice, and the living conditions of the home had not significantly improved. The trial court thereafter authorized the ACDCS to file a CHINS petition relating to D.D.

The CHINS petition relating to D.D. was filed in October 2005 and contained similar allegations as those set forth in the CHINS petitions relating to S.F. and J.F. This time, however, Father was listed as a custodian. Mother and Father admitted to several of the allegations of the new CHINS petition, including that the family home smelled of dog urine, that there was a hole in the ceiling with insulation hanging down, and that the residence was an unsafe and unsanitary home for D.D. Following a hearing in January 2006 D.D. was adjudicated a CHINS, and the trial court proceeded to disposition the same day. The trial court's dispositional decree directed Mother and Father to complete essentially the same services as previously ordered in the CHINS cases involving S.F. and J.F., including parenting classes, counseling, and home-based services.

After approximately eighteen months of sporadic participation in services, incomplete repairs to the family home, and unresolved unsanitary living conditions, the

ACDCS filed a petition seeking the involuntary termination of Mother's parental rights to D.D. on July 14, 2006. Several days later, the ACDCS filed similar petitions seeking to terminate Father's parental rights to S.F. and J.F. Evidentiary hearings were held on the ACDCS's termination petitions in December 2006, after which the trial court took each matter under advisement.

The trial court issued an order terminating Mother's parental rights to D.D. in March 2007. The court terminated Father's parental rights to S.F. and J.F. in April 2007. Mother and Father each initiated separate appeals of the trial court's termination orders.

In December 2007 this Court, in a Memorandum Decision, reversed the trial court's judgment terminating Mother's parental rights to D.D. because the evidence revealed D.D. had not been removed from Mother's care for at least six months pursuant to a dispositional decree before the ACDCS filed its involuntary termination petition, as is required by Indiana Code section 31-35-2-4(b)(2)(A). Thus, the trial court was found to be without jurisdiction to hear the case. *In re D.D.*, 877 N.E.2d 541, 541 (Ind. Ct. App. 2007). In April 2008 this Court also reversed the trial court's judgments terminating Father's parental rights to S.F. and J.F. and remanded both matters for new trials. In so doing, we concluded that Father had been denied due process of law when the trial court ordered an independent inspection of the conditions of the family home following the termination hearing but had not allowed Father an opportunity to respond to the inspection report before terminating his parental rights. *In re S.F.*, 883 N.E.2d 830, 838-39 (Ind. Ct. App. 2008).

In March 2008 the ACDCS filed a new petition to terminate Mother's parental rights to D.D. In light of this Court's order for new evidentiary hearings relating to S.F. and J.F., however, the ACDCS proceeded on its previous termination petitions as to Father. The trial court consolidated Father's and Mother's cases for purposes of the evidentiary hearings and these hearings were subsequently held on several dates between June 2008 and January 2009. On April 13, 2009, the trial court issued three separate judgments terminating Father's and Mother's parental rights to their respective children. Both parents now appeal.

### **Discussion and Decision**

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

The trial court's judgments in the present case terminating Mother's and Father's parental rights to their respective children contain specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family &*

*Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 265. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Bester*, 839 N.E.2d at 147. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

“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 M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. A trial court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

“The State's burden of proof in termination of parental rights cases is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code § 31-37-14-2). Clear and convincing evidence need not reveal that the continued custody of the parents is wholly inadequate for the child's very survival. *Id.* at 1261. Rather, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. *Id.*

When seeking an involuntary termination of parental rights, the State is required to allege and prove, among other things, that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child . . . .

Ind. Code § 31-35-2-4(b)(2)(B). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. *See* Ind. Code § 31-35-2-8.

The parents’ sole allegation on appeal is that the ACDCS failed to establish, by clear and convincing evidence, there is a reasonable probability the conditions resulting in the children’s removal or continued placement outside the family home will not be remedied or that continuation of the parent-child relationships poses a threat to the children’s well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B). In making this argument, the parents acknowledge that they both continued to use marijuana “during the course of these proceedings.” Appellants’ Br. p. 14. The parents also admit that, at the time of the termination hearing, their home was still “dirty, messy, and needed repairs[.]” *Id.* at 18. Nevertheless, Father and Mother assert that these “overlying shortcomings” did not render the house “structurally unsound or unsanitary” and therefore contend that the trial court committed reversible error in terminating their parental rights. *Id.*

We first observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. The trial court was therefore only required to find that one of the two

requirements of subsection 2(B) had been met before issuing an order to terminate Mother's and Father's parental rights. *See In re L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Although the trial court found that both prongs of subsection 2(B) of Indiana's termination statute had been satisfied, *see* Ind. Code § 31-35-2-4(b)(2)(B)(i) & (ii), we only consider whether clear and convincing evidence supports the trial court's finding that there is a reasonable probability the conditions resulting in the children's removal or continued placement outside the family home will not be remedied.

In making such a determination, a trial court must judge a parent's fitness to care for his or her child 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 the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. A trial court may also properly consider the services offered to the parent by a county department of child services and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county department of child services (here, the ACDCS) is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining there is a reasonable probability the conditions resulting in the children's removal or continued placement outside of Father's and Mother's care will not be remedied, the trial court made multiple findings concerning the persistent filth and unsafe living conditions of the family home. Specifically, the trial court found, based on the testimony of ACDCS caseworker Ashley Brzezinski, that at the time of the second termination hearing the bathroom tub and sink remained "dirty," the kitchen still had "scum and grime," the carpets had been swept but remained "stained and dirty," and based on these "health hazards" the children could not be safely returned home. Appellants' App. p. 35.<sup>3</sup>

The court also found that, during the calendar year of 2008, the CASA made multiple visits to the family home and observed continuing unsanitary living conditions including a strong odor of both urine and marijuana in February 2008, continuing filth and strong odors permeating the home in July 2008, and no beds for the children, strong odors on the porch, and both parents appearing "unclean" in August 2008. *Id.* In addition, the court found that CASA Assistant Director Suzanne Lange visited the home in October 2008 and observed cat feces on the front steps, grime in the bathtub, and a sink and toilet that required cleaning. *Id.*

Although the court acknowledged that Father had corrected the basement drainage problem and had made several additional repairs to the home, it also found, based on the testimony of Neighborhood Code Enforcement Officer Jack Close, that at the time of the

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<sup>3</sup> Although the trial court's judgments relating to the children are not identical, the relevant language contained therein and cited to throughout this opinion is substantially the same in all three termination orders. We therefore cite to only one termination order.

termination hearing several repairs were still needed, including repairs to the home's foundation. In addition, the trial court specifically found Father and Mother had each tested positive for marijuana in May 2008, Mother had tested positive for marijuana twice in June 2008, and although both parents had made progress under the "tutelage" of home-based caseworker Stacy Dickerson, Dickerson nevertheless believed neither parent was ready for "reunification of the children into their care." *Id.*

Based on these and other findings, the trial court concluded as follows:

By the clear and convincing evidence[,] the court determines that there is a reasonable probability that [the] reasons that brought about the [children's] placement outside the home will not be remedied. In 2000, the Mother received services for her older children. However, those children were placed in the custody of relatives instead of being reunited to her care. In the present case, the Mother and [Father] have been provided parenting instruction and home[-]based services that include budget assistance since 2005. They have not lacked sufficient financial resources to correct the home's condition. Nevertheless[,] neither the Mother or [Father] has demonstrated an ability to sustain a clean and safe home for the [children]. Even during the time period that evidence was heard, the Mother and [Father] continued to struggle with the responsibility to keep the home clean. In addition[,] they continued to use marijuana. Although some improvements have been made by the Mother and [Father], the Court is not convinced that they have demonstrated an ability to habitualize corrected behaviors. The Court may consider a parent's historic pattern of conduct at the time of termination to determine whether future changes are likely to occur . . . . In this case, over seven years of services have been unsuccessful in bringing about a sustainable reunification of the children into the home.

*Id.* at 30. After reviewing the record, it is clear that abundant evidence supports the trial court's findings and conclusions set forth above. The record clearly establishes that neither Father nor Mother have been able to provide the children with a safe and sanitary home environment for a sustained period of time. Moreover, testimony from various

caseworkers supports the trial court's findings that both parents have failed to benefit from services and have refused to refrain from the use of marijuana.

During the termination hearings, caseworker Brzezinski testified that although Father and Mother participated in home-based services and eventually completed a majority of the court-ordered services, including parenting classes, both parents "failed to benefit" from these services or to "use the information that they had been given to better themselves and their home in order to provide a safe place for their children." Tr. p. 664. Brzezinski also testified that although there had been some recent improvements in the home, it was her opinion that the home was "still below the [ACDCS's] standards." *Id.* In so doing, Brzezinski informed the court that during the several months leading up to the second termination hearing she had observed "soap scum and grime" in the kitchen, on appliances, and in the bathroom tub and sink, a strong odor of urine emanating from the house, "stain[ed]" and "dirty" carpets, holes and exposed insulation in the ceiling of the upstairs hallway, and that there appeared to be even more animals living in the home than in previous years. *Id.* at 664, 666, 669. Finally, in recommending termination of Father's and Mother's parental rights, Brzezinski testified that she still had "great concern" about both parents' ability to maintain the home "even at the degree that it's at right now" stating that in the past Father and Mother had "shown a great history of repeating the same problems. Having the same ongoing issues. So the safety, and cleanliness of the home and then also hygiene continue to be an issue." *Id.* at 690.

Testimony from CASA Lange and CASA Patricia Johnson echoed that of Brzezinski. Lange testified that she had "continuing concerns" regarding the dirty

conditions of the home following her visit on October 28, 2008. *Id.* at 707. Lange further explained, “The thing that struck me the most was that it had been . . . close to a year or more since I had been there previously . . . [a]nd [t]here wasn’t a whole lot different than when I had been there a year before.” *Id.* at 710. Similarly, CASA Johnson testified that when she visited the family home in February 2008, the home “reeked of urine” and she remembered thinking “how much more stuff was in the house than a year prior. The house was still dirty and in addition to the dogs[,] now they had more cats.” *Id.* at 415. Johnson also detected a “marijuana odor” in the stairwell and missing tiles on the bathroom floor. *Id.* at 416. Johnson further testified that during a visit in July 2008 she “couldn’t even get to the door without holding [her] nose” and that the house remained “very unclean.” *Id.* at 419-20. Johnson observed a marijuana smell in the home again in August 2008. In addition, the house remained dirty, there were no beds or dressers in the bedrooms for the children, the parents had “body odor,” and their hair was “mussed.” *Id.* at 421. Finally, in recommending termination, Johnson indicated she was concerned about the “length of time that had elapsed in this case and the history” and stated, “I don’t believe the parents have benefitted from services.” *Id.* at 431-32.

As previously explained, a juvenile court must judge a parent’s fitness to care for his or her children *at the time of the termination hearing*, taking into consideration the parent’s *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *D.D.*, 804 N.E.2d at 266. In addition, “[w]here there are only temporary improvements and the pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will

not improve.” *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Although we recognize, as did the trial court, that the parents made some improvements to the condition of their home immediately before the 2008 termination hearings, these improvements were nevertheless incomplete. Given the parents’ substantial history of involvement with the DCS for approximately seven years, coupled with the above-cited testimony from various caseworkers concerning the parents’ unfortunate reoccurring behavior in consistently failing to provide S.F., J.F., and D.D. with a safe and sanitary home environment, we conclude that the ACDCS clearly and convincingly established that there is a reasonable probability the circumstances leading to the children’s removal or continued placement outside their parents’ care will not be remedied.

Contrary to the parents’ assertion on appeal, this is not simply a case about “messiness and dirtiness in and of itself.” Rather, it is a case about both parents’ neglectful conduct and persistent unwillingness to take the actions necessary to provide the children with a safe and sanitary home environment, despite a wealth of services available to them through the ACDCS as well as the financial resources to correct the unacceptable conditions of the home due to Father inheriting \$60,000.00 from his mother’s estate during the course of the underlying proceedings. Moreover, it is clear from the language of the trial court’s judgments, including the court’s specific finding that “[t]he observations of the [DCS] caseworkers stand in stark contrast to the testimony of home[-]based caseworker Emily Bradley,” that the court considered all the evidence presented during the termination hearing. However, the court ultimately gave more weight to the evidence demonstrating Father’s and Mother’s habitual patterns of

neglectful conduct, current inability to properly care for the children, and continuing use of marijuana than to the evidence of their purported change in circumstances, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years before the termination hearing than to mother's testimony that she had changed her life to better accommodate the children's needs). Father and Mother's arguments on appeal, emphasizing the recent improvements in the conditions of the home as opposed to the evidence cited by the trial court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *See D.D.*, 804 N.E.2d at 264.

Affirmed.

RILEY, J., and CRONE, J., concur.