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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF PARENT-CHILD )  
RELATIONSHIP OF Wh.N. and We.N., Minor )  
Children, and S.N., Father, and N.N., Mother, )  
Appellants-Respondents, )  
)  
vs. )  
)  
INDIANA DEPARTMENT OF CHILD SERVICES,)  
Appellee-Petitioner, and )  
)  
GUARDIAN AD LITEM PROGRAM, )  
Co-Appellee (Guardian Ad Litem) )

No. 47A04-0907-JV-415

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APPEAL FROM THE LAWRENCE CIRCUIT COURT  
The Honorable Andrea K. McCord, Judge  
Cause Nos. 47C01-0808-JT-318 and 47C01-0808-JT-319

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**February 17, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

S.N. (“Father”) and N.N. (“Mother”) appeal the involuntary termination of their parental rights to their children, Wh.N. and We.N., claiming there is insufficient evidence to support the juvenile court’s judgment. Concluding that the juvenile court’s judgment terminating Father’s and Mother’s parental rights is supported by clear and convincing evidence, we affirm.

**Facts and Procedural History**

Father and Mother are the biological parents of Wh.N., born on December 12, 1997, and We.N., born on July 18, 2003. On July 11, 2007, the family was involved in an automobile accident, where Mother was driving even though she did not have a valid driver’s license. While receiving treatment following the accident, Wh.N. told hospital personnel that We.N. had been molested by Tom Phillips (“Phillips”). The family was living in Phillips’s home at the time. Mother and Father knew that Phillips had touched We.N.’s vaginal area, but the family continued to reside in Phillips’s home and were returning to that residence at the time of the accident. Mother and Father had told Wh.N. that they would report the incident to the police after they were able to find another place to live.

The Lawrence County Office of the Indiana Department of Child Services (“the DCS”) helped the family pay for a hotel room that night after Father informed the DCS that they planned to return to his parents’ home the next day, rather than to Mr. Phillips’s home. However, Wh.N. and We.N. were removed from Mother’s and Father’s care

shortly thereafter when the DCS learned that Father's parents were convicted child molesters. Petitions alleging that Wh.N. and We.N. were children in need of services ("CHINS") were filed on July 13, 2007.

At the dispositional hearing, Mother and Father were ordered to participate in home-based services, including therapy, complete psychological evaluations, and participate in visitation with the children. In contrast to most of the parents who are parties to proceedings like these, Mother and Father cooperated with all services throughout the CHINS proceedings. They also maintained an adequate residence with a bedroom for the children. All parties agree that Mother and Father love the children.

However, for the following reasons detailed in the trial court's findings of fact, the DCS determined that it was in the children's best interests to proceed with an involuntary termination of Mother's and Father's parental rights:

13. Dr. John Ireland, the clinical psychologist who performed the psychological evaluations of both Mother and Father, administered both an Intellectual Assessment and a Personality and Parenting Assessment on each parent. Mother completed the Wechsler Adult Intelligence Scale, receiving a full scale IQ score of 56. Father received a full scale IQ score of 75.

14. After administering a parenting stress index to both parents, Dr. Ireland reported that both Mother and Father had "extreme difficulty attaching to these children."

15. Although both parents were aware that Tom Phillips had sexually abused their daughter on more than one occasion, they have continued to move back into Phillips' home where they stayed rent-free.

16. At the time of the testing, Dr. Ireland reported that Father was aware that Tom Phillips had molested [We.N.] on more than one occasion and Dr. Ireland reported that he was "amazed that Father was not able to understand the implications of letting Tom Phillips abuse his children." Dr. Ireland described Father's social maturity as being "irresponsible" and stated that his "social judgment would be either naïve or certainly somewhat easily victimized." He was concerned about reports that Father had been

previously hospitalized for a bi-polar condition that was not being treated. Dr. Ireland concluded, “Basically, what I think occurs is that this gentleman simply says ‘yes’ to anything.”

17. Dr. Ireland also described Mother’s test results as showing that she was “naive and easily victimized.” He wrote, “I asked [Mother] why she would always go back to Tom’s after these various episodes, and she said they had nowhere to stay...she could not see going anywhere but Tom’s house. Even if I gave her options, she has trouble seeing how to use them.” He concluded, I think there is great concern, not about her intentions at all, but about her ability to parent.”

18. Although the DCS continued to work with the [Parents] in an attempt to improve their parenting skills, the caseworkers eventually concluded that Mother, who had an IQ of 56, and Father, who had an IQ of 75, did not have the mental capability to comprehend and retain the information given them.

19. Mother demonstrates a lack of understanding about why her children are in care. At trial she stated that she blames herself for the situation her family is in. When asked why, Mother stated that she had done wrong by driving a car without a license.

20. Mother also demonstrates a lack of understanding of the consequences of sexual molestation has had on her children. Throughout the case, during therapy and parent aide sessions, Mother stated that she “got it worse than [We.N.] did.”

21. Father also seems not to understand why his children are in care. When asked at trial why his children were removed, Father stated that it was because of his lack of housing, and then he added that he really isn’t sure why they were removed.

22. Father has demonstrated a lack of understanding of how to keep the children safe. He testified that his parents were convicted of molesting his siblings and spent time in prison. Father testified that he has forgiven them and that he trusts them. He also testified that he would let his parents baby-sit the children but cannot explain why he thinks his children would be safe with his parents.

23. . . . Both case managers express their belief that these parents still have no understanding of what it takes to keep their children safe. Morton said she fears that Mother will let the children continue to be around Tom Phillips. Kiser agreed with that assessment. Both case managers testified that they believed it would be in the children’s best interest for the parental rights of both Mother and Father to be terminated.

24. Parent Aide Kali Wrigley, Family Counselor George Freeman, and the two therapists, Julie Miler and Carol Ray, all testified that, in spite of the therapy and counseling aid the parents have received, neither parent is now able to understand why the children were removed in the first place or what

is required of the parents to remedy that situation. In each case, they testified that the only improvement they had seen was in the cleanliness of the home. After 21 months of services they had seen no evidence that the parents comprehend the need to protect their children from sexual abuse.

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26. The testimony of both parents at the hearing showed that they did not comprehend the importance of protecting their girls from sexual abuse in the future. Both Mother and Father testified that, if the children were returned to them, that they would let the parental grandparents baby-sit the girls, even though these grandparents had been convicted of child molesting and incest. Father stated that his parents had paid their price by going to prison and that he trusted them.

27. When asked specifically what they would do in the future to keep the girls safe, Mother said that she would call 911 if she saw a stranger outside the house. Father said that he would not keep tools around the house where the kids could fall and hurt themselves and, if he saw a stranger hanging around, he would get a gun. Neither parent seemed to recognize the need to protect the children from possible further sexual abuse by friends or family.

28. Carol Ray, the therapist for [Wh.N. and We.N.], also attempted to work with the parents on safety concerns. During one session, Mother told Ray that she “had seen her children molested by many people” and that she had seen Tom Phillips “stick his finger inside her daughter,” but Mother was unclear as to which daughter. During another session, Mother indicated that Tom Phillips had tied her daughter up and fondled her and also fondled Mother, after which Mother left the residence with Tom Phillips. When they returned to Phillips’s home, [We.N.] was complaining about “hurting down there,” so Mother put Neosporin on [We.N.’s] vagina. Therapist Ray testified that she did not think the children would be safe if they were returned to the care of their parents.

29. Kali Wigley, an employee of Ireland Homebased Services who served as parent aide for the [Parents], stated her belief that Mother would not be able to stand up for her children if they were in danger. George Freeman, the family counselor, testified that he didn’t think Father could keep the girls safe from others who might harm them. All the service providers testified that termination of parental rights would be in the best interests of the children.

30. Although both parents had denied to Dr. Ireland that they suffered from any psychosis, evidence presented at the hearing strongly suggested otherwise.

31. [Wigley] described many psychotic episodes suffered by Mother during the 21-month period. Wigley described having to take Mother to the Center for Behavior Health and Meadows Hospital where she was given medication for her psychosis; Wigley also described Mother’s

unwillingness to take some medications and her difficulty in taking the proper dosage of other prescribed medications.

32. Father testified that he had been previously hospitalized for psychotic episodes in which the evil doll from the motion picture Chuckie kept talking to him and chasing him. He stated that he had been prescribed medications for his bi-polar condition but that he had not followed up with treatment medications.

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35. The evidence presented by the service providers and the parents themselves indicated that both parents appear to be experiencing psychotic episodes that would interfere with their ability to parent.

Br. of Appellant.<sup>1</sup>

The trial court issued these findings of fact and conclusions of law on June 24, 2009. The court concluded that the DCS presented clear and convincing evidence that termination of Mother's and Father's parental rights was in Wh.N.'s and We.N.'s best interests. Mother and Father now appeal. Additional facts will be provided as needed.

### **Standard of Review**

We begin our review by acknowledging that 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 a 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, 265 (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 juvenile 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.

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<sup>1</sup> Mother and Father failed to file an Appellants' Appendix. Therefore, we cite to the findings of fact contained in the Appellants Brief.

Here, in terminating Father’s and Mother’s parental rights, the juvenile court entered specific findings and conclusions. When a juvenile 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. “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the juvenile court’s decision, we must affirm. L.S., 717 N.E.2d at 208.

### **Discussion and Decision**

A parent’s interest in the care, custody, and control of his or her children is arguably one of the oldest of our fundamental liberty interests. Bester, 839 N.E.2d at 147. Hence, “[t]he 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. These parental interests, however, are not absolute and must be subordinated to the child’s interests when determining the proper disposition of a petition to terminate parental rights. Id. In addition, 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. K.S., 750 N.E.2d at 836.

Before an involuntary termination of parental rights may occur, 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) (2008). Moreover, “[t]he 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 (2008)).

Father and Mother challenge the sufficiency of the evidence supporting the juvenile court’s findings as to subsection 2(B) of the termination statute cited above. See Ind. Code § 31-35-2-4(b)(2)(B). However, Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and therefore requires the juvenile court to find only one prong of subsection 2(B) has been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Accordingly, we address only whether the DCS proved that the conditions that resulted in the children’s removal or reasons for placement outside the home of the parents will not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child’s removal and continued placement outside the home will or will not be remedied, the juvenile 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. R.W., Sr. v. Marion County Dep't of Child Serv., 892 N.E.2d 239, 246 (Ind. Ct. App. 2008). However, 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. A juvenile court may properly consider the services offered by DCS, and the parent's response to those services, as evidence of whether the conditions that resulted in the child's removal from the home will be remedied. Id. at 248. DCS is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability that the parent's behavior will not change. In re B.J., 879 N.E.2d 7, 18-19 (Ind. Ct. App. 2008), trans. denied; In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Family case manager Christina Morton testified that Mother and Father do not understand how to keep their daughters safe. She further noted that Mother continues to have a relationship with Phillips. Tr. p. 28. Morton stated that although she believes that Mother and Father "love their children very much," they would continue to allow their children around people who would put their kids at risk. Tr. p. 29. Morton also testified that because of their limited intellectual capacities, giving Mother and Father more time and services would not improve their ability to parent and understand how to protect the children. Tr. p. 33. Family case manager Pam Kaiser agreed that the "original safety concerns that resulted in removal are still present and the concerns greatly outweigh the truth that the parents love their children and want them home." Tr. pp. 64-65.

Clinical Psychologist Dr. John Ireland testified that "something ill could occur to a wife or child", and Father would likely not "interact to stop it or ameliorate it in some

manner.” Tr. p. 94. Parent aide Kali Wigley, who is employed by Dr. Ireland, testified that Mother is not always able to make appropriate decisions to protect the children and Mother would not be able “to stand up for” the children if something bad happened to them. Tr. p. 132. Also, both parents indicated their willingness to allow the children to be cared for by and/or reside in Father’s parents’ home. Id. Father does not have any concerns about the children spending unsupervised time with his parents despite the fact that Father’s parents were convicted of child molesting and incest. The victims of those crimes were Father’s sister and brother.

Family counselor George Freeman, who is also employed by Dr. Ireland, also stated that Mother and Father do not understand how to protect the children from sexual abuse. Freeman was also of the opinion that Father would not be able to “stand up for” the children if Father’s parents molested them. Tr. p. 161. Freeman testified that Father and Mother do not understand that the DCS’s “main concern” is physical harm to the girls. Tr. p. 165 (“I don’t think they understand what could happen if they leave the kids with somebody else.”).

On the date of the hearing, Mother still did not understand that the children were removed because We.N. was molested by Phillips, and the family continued to reside in Phillips’s home even though Mother and Father knew the molestation had occurred. Tr. p. 188. In fact, prior to the incident that lead to the children’s removal, Mother observed Phillips touch We.N. on her vaginal area. The family moved out of Phillips’s home, but did not report the incident. Tr. pp. 193-94.

Despite this incident, the family returned to Phillips's home. After their return, Wh.N. saw Phillips again touch We.N. on her vaginal area, but the family continued to reside in Phillips's home until the children were removed from Mother's and Father's care. Tr. pp. 195-96. Mother, who was allegedly raped by Phillips several times, testified that she "got it worse than" We.N. Tr. p. 208. Mother also testified that she allowed Father's parents to care for the children despite her knowledge that they are convicted child molesters. Tr. p. 197. Mother stated that on one occasion Wh.N. told her that Father molested her, and Mother responded, "Your dad would not molest you." Tr. p. 218.

Father testified that his children were placed in foster care because he and Mother did not have a stable home for the children. Tr. p. 246. He did not understand that the children were removed because We.N. had been molested and Father planned for the family to return to his parents' home. Tr. p. 247. Father stated that he has forgiven his parents for their crimes and that they have served their time in prison. Id. Father also testified that the children are safe with his parents, he trusts them, and he is not concerned that his parents might molest the children. Tr. p. 249. When therapist Julie Miller expressed concern to Father about his parents caring for the children, Father compared his parents' acts of molestation and incest to President Clinton's affair with Monica Lewinsky. When Miller tried to explain that those were "very different" situations, Father did not seem to understand "how those were different situations and how these adults could pose a direct threat to the children." Tr. p. 296.

Finally, Guardian Ad Litem Michele Murphy testified to her belief that there is a reasonable probability that continuation of the parent-child relationship is a threat to the well-being of the children. Tr. p. 414. She stated that Mother and Father do not exhibit good decision making skills. The service providers, therapists, and guardian ad litem all testified that termination of the parent-child relationship was in the children's best interests. See e.g. tr. pp. 29, 71, 415.

Mother and Father argue that their parental rights were terminated because they are mentally handicapped. "Our supreme court has recognized that mental retardation, standing alone, is not a proper ground for terminating parental rights." In re A.S., 905 N.E.2d 47, 50 (Ind. Ct. App. 2009) (citing Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234-35 (Ind. 1992)). However, mental deficiency or retardation will not excuse a parent's failure to provide for children's needs or allow a parent to keep his or her "children regardless of the danger to their health and well-being." Id. Moreover, mental illness may be considered "in instances where the parents are incapable of or unwilling to fulfill their legal obligations in caring for their child[.]" See R.G. v. Marion County Office of Family and Children, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995). "This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development will be threatened." Id.

In this case, Father's and Mother's mental deficiency and/or mental retardation certainly contributes to their inability to understand how to keep their children safe from molestation and sexual abuse. Moreover, it appears that they do not comprehend the

damaging consequences their children suffer from being molested. It was therefore appropriate for the juvenile court to consider the parents' mental deficiencies in determining whether the parents are capable of protecting the children. Despite the claims of Mother and Father, the juvenile court did not terminate their parental rights because of their low IQ scores. To the contrary, the court terminated their parental rights because

[t]he parents have demonstrated a consistent pattern of inability to comprehend the danger that their children were in at the time of removal. The parents have also demonstrated a lack of understanding of how to keep their children safe or even what to look for in protecting their children. Despite the services that have been in place since July 2007, the parents have not shown improvement in their understanding of the situation that lead to the children's removal or what is necessary to ensure the children's safety. The Court finds that there is an overwhelming probability that the conditions that resulted in the children's removal and placement outside the home will not be remedied.

Br. of Appellant.

For all of these reasons, we conclude that the DCS proved by clear and convincing evidence that the conditions that resulted in the children's removal and placement outside Mother's and Father's home will not be remedied. Mother and Father have not demonstrated an understanding of the damaging consequences molestation has on their children, or how to keep their children safe from the risk of further molestation. Accordingly, we affirm the juvenile court's judgment terminating Mother's and Father's parental rights to Wh.N. and We.N.

Affirmed.

BARNES, J., and BROWN, J., concur.

