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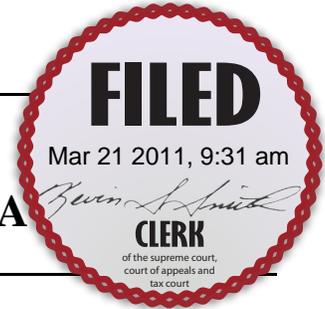
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF THE )  
PARENT-CHILD RELATIONS OF: A.K., Jr., Minor )  
Child, and T.K., Mother, and A.K., Sr., Father )

A.K., Sr., )  
Appellant-Respondent, )

vs. ) No. 27A02-1009-JT-1004

INDIANA DEPARTMENT OF CHILD SERVICES, )  
Appellee-Petitioner. )

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APPEAL FROM THE GRANT SUPERIOR COURT #2  
The Honorable Randy G. Hainlen, Senior Judge  
Cause No. 27D02-1002-JT-106

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**March 21, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, A.K., Sr. (Father), appeals the trial court's involuntary termination of his parental rights to his minor child, A.K., Jr.

We affirm.

## ISSUES

Father raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the trial court properly determined that there was a reasonable probability that the conditions that resulted in the removal or the reasons for placement outside the home would not be remedied; and
- (2) Whether the termination was in A.K., Jr.'s best interests.

## FACTS AND PROCEDURAL HISTORY

A.K., Jr., born on September 29, 2008, is the biological child of Father and T.K. (Mother).<sup>1</sup> A.K., Jr. lived with Father and Mother until January 22, 2009, when the Indiana Department of Child Services (IDCS) filed a Petition alleging A.K., Jr. to be a Child in Need of Services (CHINS). That day, A.K., Jr. was admitted to the Burn Unit at St. Joseph's Hospital in Fort Wayne, Indiana, after being transported by helicopter from the Marion General Hospital Emergency Room in Marion, Indiana. A.K. Jr. had suffered second and

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<sup>1</sup> Mother is not part of this appeal as she executed a consent to adoption on June 27, 2010. Consequently, we limit our recitation of the facts to those facts pertinent to Father's appeal. However, we note that Mother pled guilty to neglect of a dependent resulting in bodily injury, a Class C felony. She was sentenced to four years, with forty-six days executed and the balance served on formal, supervised probation. As part of her probation, Mother is prohibited from unsupervised contact with her son.

third degree burns to the lower portion of his body, including burns to his buttocks, genitalia, lower stomach, thighs, ankle, and feet.

According to A.K., Jr.'s parents, Mother had bathed the child in lukewarm water and he appeared fine after his bath. Later, the parents told IDCS that the bath was initially hot, but they then pulled the plug and ran cold water into the sink for the bath. A.K., Jr.'s treating physician disputed the parents' version of what had happened and opined that the child's burns were consistent with him being placed in scalding hot water. It is undisputed that Mother bathed the child while Father was running an errand. When Father returned home, A.K., Jr. was still in the sink and unclothed; Father did not observe any injuries. Father did not realize that A.K., Jr. was injured until approximately one and one-half hours after the bath, when the child's skin was peeling off. At that point, Mother and Father took A.K., Jr. to the emergency room.

On April 23, 2010, the trial court conducted a fact-finding hearing on the CHINS petition and found A.K., Jr. to be a CHINS. The trial court authorized the placement of the child with maternal relatives. On May 28, 2009, the trial court issued its dispositional order in the CHINS proceeding, recommending the continued placement of A.K., Jr. outside the care of his parents and ordering the parents to participate in court-ordered services.

Throughout the proceedings following the trial court's dispositional order, Father participated in many of the services ordered and appeared and participated in review and permanency hearings. At all times however, A.K., Jr. remained placed with his maternal relatives. On February 17, 2010, IDCS filed its petition for involuntary termination of the

parent-child relationship. On June 17, June 25, and June 29, 2010, the trial court conducted a hearing on IDCS's petition. At the time of the termination hearing, Father continued to reside with Mother despite his knowledge of her conviction for neglect of a dependent resulting in bodily injury, a Class C felony, and the condition of her probation that she was prohibited from unsupervised visitation with A.K., Jr. On August 10, 2010 the trial court entered its Order, terminating Father's parental rights to his minor child. The trial court concluded that

(9) There is a reasonable probability that the conditions that resulted in [A.K., Jr.'s] removal and/or the reasons for his continued placement outside Father's care will not be remedied in that:

...

(e) At the time of the fact-finding hearing herein, Father still believed that he had no responsibility for the injuries to [A.K., Jr.] and/or his condition upon arrival at the hospital.

...

(g) Mother and Father were divorced in March 2008; however, the parents continue to reside in the same home. Father has no independent means of providing for his own needs as he is currently dependent upon Mother's SSI income. Father is unemployed.

(h) Father was offered counseling and home-based case management services. Father previously had a job, but was fired. While Father did participate in his therapy, he did not follow the therapist's advice to separate from Mother and find other means to provide for himself.

(i) While Father's therapist, Eduardo Pereira, did advocate for Father, Mr. Pereira also stated that he had reservations regarding whether Father could raise [A.K., Jr.] on his own. Father acknowledged to Mr. Pereira that Father would have difficulty raising [A.K., Jr.] as a single parent.

(j) Father's only plan offered to [IDCS] and to the [c]ourt throughout the CHINS proceeding and at fact-finding was to take [A.K., Jr.] to California to live with Father's aunt.

(k) Throughout the one and one-half years prior to the fact-finding herein, Father's aunt did not contact [IDCS] to request consideration for ICPC placement, or visit with Father and/or [A.K., Jr.] in Indiana. [A.K., Jr.] has never met Father's family.

(l) Prior to removal, [A.K., Jr.] received services through Early Head Start as agreed to by Mother. Father did not participate on a regular basis while [A.K., Jr.] was in the home. Early Head Start services continued after [A.K., Jr.'s] removal, however, the provider did not see improvement in Father's abilities. The same issues and concerns were identified after 1 ½ years.

(m) Father was provided home-based case management services throughout the CHINS proceeding, yet failed to fully take advantage of those services. Father did not make progress with services, due in part to Father's attitude that it was Mother, not Father, who needed assistance and education. For example, Father testified that he did not pay "too much attention" to home-based case manager.

(n) At no time during the underlying CHINS proceeding did [IDCS], Father's service providers, or CASA recommend that [A.K., Jr.] be returned to Father's care. All the evidence presented by [IDCS] was that [A.K., Jr.] would not be safe in Father's care.

(o) Father has consistently visited with [A.K., Jr.]; however, this visitation has remained supervised.

(p) [A.K., Jr.'s] CASA recommended termination of Father's parent-child relationship as being in [A.K., Jr.'s] best interest.

(q) [A.K., Jr.] is thriving in his relative placement where his medical, physical and emotional needs are being met. The relatives are prepared to provide a permanent home through adoption.

10. [IDCS] has met its burden of proof as to both portions of I.C. [§] 31-35-2-4(b)(2)(B)(i). There is a reasonable probability that the conditions resulting in the removal of [A.K., Jr.] from Father's care will not be remedied. Father lives in the same home, with the same person, and Father has no real concern that Mother poses any danger to [A.K., Jr.]. Father cannot or will not protect

[A.K., Jr.] from further harm by Mother if Father does not acknowledge there is a risk of harm. Further, there is a reasonable probability that the conditions that led to [A.K., Jr.] remaining outside Father's care, *i.e.*, Father's inability or unwillingness to provide a safe environment for [A.K., Jr.], and inability to provide for [A.K., Jr.'s] needs on a daily basis without assistance, will not be remedied.

11. The [c]ourt notes that [Father] did visit his son and did at least attend services offered. However, simply going through the motions of receiving services alone is not sufficient if the services do not result in the needed change. Clearly, Father loves [A.K., Jr.] and desires reunification; however, such does not overcome the evidence that Father failed to benefit from services and failed to take other steps necessary for reunification. Father was not committed to doing the things necessary for reunification.

12. Father, by counsel, has suggested that this [c]ourt give Father more time. However, the testimony of the [IDCS] manager, home-based case managers, and CASA indicated that Father was not able to safely parent [A.K., Jr.] now, and likely would not be able to do so in the future. Pursuant to I.C. [§] 31-35-2-8, this [c]ourt must either find the allegations in the [p]etition to be true, or find the allegations not to be true and dismiss the petition. This [c]ourt does not have the option of continuing this matter for a period of time to see if Father's circumstances change.

13. Termination is in [A.K., Jr.'s] best interests in that he has been out of parents' care for one and one-half years, the majority of his young life. [A.K., Jr.] is in need of stability and permanency in his life. Long-term foster care, even in an excellent home, cannot provide such permanency. There is a reasonable probability that the continuation of the parent-child relationship with Father would not result in reunification within a reasonable period of time, if ever. None of the witnesses testified that they could recommend reunification, or would be able to do so in the near future. [A.K., Jr.] is entitled to permanency and his own needs are paramount.

14. The [IDCS] has a satisfactory plan for the care and treatment of [A.K., Jr.] which is to place him for adoption with preference going to the current relative placement, though the [c]ourt does have concern over the long term ability of the relatives to fully care for the child.

(Appellant's App. pp. 420-22) (internal citations omitted).

Father now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Father contends that the IDCS did not present sufficient evidence to support the involuntary termination of the parent-child relationship with A.K., Jr. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We consider only the evidence that supports the trial court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the trial court enters findings of fact and conclusions of law in its termination of parental rights, our standard of review is two-tiered. *Id.* First, we determine whether the evidence supports the findings, and second, whether the findings support the conclusions of law. *Id.*

In deference to the trial court's unique position to assess the evidence, we set aside the trial court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the conclusions of law drawn by the trial court are not supported by its findings of fact or the conclusions of law do not support the judgment. *Id.*

It is axiomatic that 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*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the

circumstances surrounding a termination of the parent-child relationship. *In re K.S.*, 750 N.E.2d 832, 837 (Ind. Ct. App. 2001). Parental rights may therefore be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

To effect the involuntary termination of a parent-child relationship, the IDCS must present clear and convincing evidence establishing that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least (6) months under a dispositional decree;
  - (ii) a court has entered a finding under I.C. § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
  - (iii) the child has been removed from the parent and had been under the supervision of a county officer of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is reasonable probability that:
  - (i) the condition 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;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

In the instant case, Father asserts that the trial court erred in terminating the parental relationship with his son. Father disputes the trial court's conclusion that there was a

reasonable probability that the conditions that resulted in the removal or the reasons for placement outside the home would not be remedied and that the termination was in the child's best interests. Specifically, he contends that "no direct evidence was provided by [IDCS] to prove that the specific conditions that justified removal continued to exist." (Appellant's Br. p. 20). Rather, he maintains that the evidence presented merely consisted of a litany of concerns by IDCS and service providers about speculative future problems and speculation that Father would fail to implement safety tools within his home.

### I. *Conditions and Placement*

First, we address Father's claim that the IDCS failed to present direct evidence establishing that there was a reasonable probability that the conditions that resulted in the removal or the reasons for placement outside the home would not be remedied.

In determining whether the conditions that led to a child's removal will not be remedied, the trial court must judge a parent's fitness to care for his child at the time of the termination hearing and take into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. However, the trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. *Id.* Moreover, IDCS is not required to rule out all possibilities of change, but only needs to establish that there is a reasonable probability the parent's behavior will not change. *Moore v. Jasper County Dep't. of Child Servs.*, 894 N.E.2d 218, 226 (Ind. Ct. App. 2008).

In order to reach a conclusion, the trial court may consider the parent's response to the services offered through the IDCS. *Lang v. Starke Co. Office of Family and Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007). "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *In re L.S.*, 717 N.E.2d 204, 210 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002).

The record is clear that Father attended and participated in some of the services ordered by the trial court and was faithful in his visitation with A.K., Jr. However, merely going through the motions of receiving services alone is not sufficient if the services do not result in the needed change but only suggest a temporary improvement and the pattern of conduct shows no overall progress. *See In re J.S.*, 906 N.E.2d 226, 235 (Ind. Ct. App. 2009). Here, all of the case workers involved with Father expressed their concern about the lack of progress in Father's skills to adequately care for his young child.

Family behavior specialist, Stephanie Morris (Morris), commenced working with Mother in February of 2009 twice each week on parenting skills, child development, and related matters. Although Father was present in the home while Morris was working with Mother, Father would often sleep or play videogames, saying that "this is more [Mother's] thing." (Transcript p. 61). It was not until September of 2009 that Father enrolled for services with Morris. Additionally, Morris was present during some of Father's supervised

visitations with A.K., Jr. She observed that Father needed continual prompting to do activities that would nurture the bond with his son. In this light, she testified that

initially the visits were going much better. As time wore on, I began to see [Father] begin to check out so to speak. He would pack up [A.K., Jr.'s] belonging about 20 minutes before the end of the visit, have him bundled up in his hat and coat[.] Often times he would try to play videogames at the end or he would still be playing a video game at the beginning of the visit and want to finish up whatever level he was at in the video games before he acknowledged his son's presence.

(Tr. pp. 63-64). She noticed that often times, the house was not ready for the visit: items that presented a safety concern were not placed out of reach of the child or picked up.

Rebecca Ball (Ball), a case manager, provided supervision during some of Father's visits with A.K., Jr. During these visits, Ball heard Father call his son "stinky, greedy, fat head, little rat." (Tr. p. 89) She testified that Father was not able to use the parenting skills that were being taught. She was concerned that Father was not able to pick up the child's cues during mealtimes and either overfed or underfed him. Father was not interested in making his home a safe environment for the child: there were times when A.k., Jr. was out of sight "or he would reach for objects like scissors or a trash can, [or] electrical cords[.]" (Tr. p. 86).

Likewise, Early Head Start Home Visitor, Stephanie Ellet (Ellet), expressed her concern about Father's apparent unwillingness to learn how to care for A.K., Jr. During her time of working with Father, she never noticed any progress in Father's skills. Deana Wright, a clinical supervisor for foster care, summed up Father's abilities as follows:

with intense therapy and a lot of personal, emotional work on [Father's] part, there could be some hope. The issues you're talking about though are very

chronic and so you're talking about some pretty intensive possibly long term therapy.

(Tr. pp. 118-19).

Father's main family case manager, Joseph Tinsley (Tinsley), testified that Father explained to him that during the hour time lapse between the time that A.K., Jr. incurred the burns and actually going to the emergency room, Father failed to recognize the severity of his son's injuries. Tinsley explained that A.K., Jr.'s skin was totally gone on his buttocks and there were patches on his leg where the skin was gone and the light pink second layer underneath was visible. During the proceedings, Father has continued to reside with Mother even though they are divorced now. Father has indicated that he did not consider A.K., Jr. to be at risk in Mother's care as long as Mother did not bathe him.

With respect to Father's progress with services, Tinsley acknowledged that progress has been very minimal throughout the whole case. He clarified that

One thing I've learned about [Father] throughout these proceedings is that [Father] doesn't like to be directed on what to do and he's very resistant to doing what people tell him to do. If he doesn't agree with it or if he doesn't think it's a good idea, he's not going to do it and that's regardless of if the thing that he's being told is the right thing for his child or not.

(Tr. p. 136). As an example, Tinsley stated

[Father was] told earlier prior to the monitored visits beginning that the type of diaper that [he] had in the home caused [A.K., Jr.'s] skin to have a bad reaction and it would cause him a lot of irritation to where he would be digging at his scars and they would have to give him [Benadryl] so he would stop itching and there was a lot of red irritation on his buttocks. After being told that during a visit [Father] used the same diaper he was told not to use in a previous visit on little [A.K., Jr.]. By the time [A.K., Jr.] went home, his skin was broken out and he was [] crying uncontrollably and that they had to give him [Benadryl] to calm down. When [Father] was approached about that

situation, [Father] stated that he remembered that he was not supposed to use those diapers, but yet he did it anyway because he didn't feel that the reason that was given to him was sufficient enough.

(Tr. p. 139). At no point did Father graduate from supervised to unsupervised visits. At no point did any service provider recommend reunification of A.K., Jr. with Father.

As stated before, Father continues to reside with Mother and is financially dependent upon Mother's social security income as he is unemployed. Father testified, and other witnesses confirmed, that Father's plan in parenting his son was to return to California where all his relatives are residing and live with his aunt who would help him in caring for A.K., Jr. Despite Tinsley's request to have the aunt contact him in order to be screened, Tinsley never talked to Father's aunt.

Based on the evidence before us, we conclude that a reasonable probability exists that the conditions that resulted in the removal will not be remedied.<sup>2</sup> Tinsley aptly summarized Father's attitude as

Throughout the life of the case, I have seen [] no emotion from [Father] regarding his son's injuries. With [Father], he's sided with [Mother] through most of this and stood beside [Mother]. His concern was never with the burden his son's going to have to carry throughout his whole life with these scars and with the potential to have multiple surgeries in the future.

(Tr. p. 159). Although Father was enrolled in services, no progress was made. He appears unwilling to deal with parenting problems and to cooperate with those providing social

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<sup>2</sup> Because subsection B of I.C. § 31-35-2-4(b)(2) is written in the disjunctive, we will affirm if clear and convincing evidence supports either condition. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006), *trans. denied*. Therefore, we do not discuss whether evidence supports the trial court's conclusion that the continuation of the relationship between Father and his child poses a threat to the child because we find that clear and convincing evidence supports the trial court's conclusion that the conditions that resulted in the child's removal will not be remedied.

services as he continues to rely on them to repeatedly give him the same detailed instructions on how to parent his child. As such, we agree with the trial court's conclusion.

## II. *Best Interests*

Next, we address whether termination of the relationship with Father is in the best interests of A.K., Jr. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the IDCS and to consider the totality of the evidence. *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 182, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

To support his argument that termination is not in A.K., Jr.'s best interests, Father relies predominately on the testimony of Ed Pereira (Pereira), the director of clinical services at the Family Service Society in Marion, indicating that Father does not present a threat to his child. Specifically, Pereira testified that based on the tests he had administered to Father, Father was capable of learning the necessary parenting skills to get reunited with his child and would not intentionally harm his son. He advocated giving Father more time to prove himself.

“It is undisputed that children require secure, stable, long-term continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty.” *Baker v. Marion County Office of Family & Children*, 810 N.E.2d 1035, 1040 (Ind. 2004). Requiring A.K., Jr. to wait indefinitely until

Father can master the needed parenting skills and is able to adequately provide—financially and emotionally—for him would be harmful to A.K. Jr.’s emotional and physical growth. A.K., Jr. is ready to move on and start a new phase in his life. Therefore, based on the evidence before us, we find termination to be in A.K. Jr.’s best interests. As such, we refuse to disturb the trial court’s decision.

### CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Father’s parental rights to A.K., Jr.

Affirmed.

ROBB, C.J., and BROWN, J., concur.