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ATTORNEY FOR APPELLANT:

**THOMAS M. THOMPSON**  
Thompson Law Office  
Connersville, Indiana

ATTORNEY FOR APPELLEE:

**CHRISTOPHER R. BERDAHL**  
Department of Child Services  
Connersville, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHARLIE E. NICHOLS, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 21A01-0809-JV-453  
 )  
FAYETTE COUNTY DEPARTMENT )  
OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE FAYETTE CIRCUIT COURT  
The Honorable Daniel Lee Pflum, Judge  
Cause No. 21C01-0712-JT-830  
Cause No. 21C01-0712-JT-831  
Cause No. 21C01-0712-JT-832

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**April 3, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Respondent Charlie E. Nichols (“Father”) appeals an order terminating his parental rights to C.L.N., A.N., and H.N., upon the petition of the Appellee-Petitioner Fayette County Department of Child Services (“the DCS”). We affirm.

## **Issue**

Father presents a single issue for review: Whether the DCS established, by clear and convincing evidence, the requisite statutory elements to support the termination of his parental rights.

## **Facts and Procedural History**

Father and Laura Conn (“Mother”) had three children, C.L.N., born in 1997, A.N., born in 2000, and H.N., born in 2005 (“the Children”).<sup>1</sup> On December 5, 2005, the Children were removed from Mother’s care after methamphetamines and precursors were found in her home. At the time of removal, Father appeared at the residence but could not take custody of the Children because he was intoxicated and a preliminary investigation revealed that he had a history of battery and alcohol-related criminal offenses.

The Children were initially placed with their maternal grandmother, but were removed after their maternal step-grandfather died of a methadone overdose. The DCS filed termination petitions but withdrew them with the objective of placing the Children back in Mother’s home. However, Mother was arrested on three drug-related felonies and reunification did not occur. Father also began serving a prison term. The Children have not

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<sup>1</sup> They also had a fourth child, who was adopted in infancy by a relative.

lived with either parent since 2005.

Father was released from prison on May 28, 2007, but was re-incarcerated on November 27, 2007. On December 5, 2007, the DCS petitioned to terminate Mother's and Father's parental rights to the Children. On June 4, 2008, Mother consented to the termination of her parental rights and the trial court heard evidence related to the petitions to terminate Father's parental rights. On August 8, 2008, the trial court entered an order terminating Father's parental rights to the Children. Father now appeals.

## **Discussion and Decision**

### A. Standard of Review

This court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, this Court neither reweighs the evidence nor judges the credibility of the witnesses. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

### B. Requirements for Involuntary Termination of Parental Rights

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Bester, 839 N.E.2d at 147. The purpose of terminating parental rights is not to punish the parents, but to protect their children. In re R.H., 892 N.E.2d 144, 149 (Ind. Ct.

App. 2008).

Indiana Code Section 31-35-2-4(b) sets out the elements that the DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

(A) One (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under IC 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) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(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;

(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.

The trial court must subordinate the interests of a parent to those of the child when evaluating the circumstances surrounding the termination. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. Id. The trial court need not wait to terminate the parent-child relationship until the child is irreversibly harmed such that his or

her physical, mental, and social development is permanently impaired. Id.

### C. Analysis

Father contends that the DCS presented insufficient evidence to establish a reasonable probability that the conditions that resulted in the Children's removal will not be remedied or that the continuation of the parent-child relationship would pose a threat to them. More specifically, Father claims that "zero services" were available during his prior incarceration, "very little DCS services were offered to him" prior to his 2007 re-incarceration and, once he was offered various programs during his current incarceration, "he has taken full advantage of them." Appellant's Brief at 11.

It is well-settled that a parent's habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Among the circumstances that a trial court may properly consider are a parent's criminal history, drug and alcohol abuse, historical failure to provide support, and lack of adequate housing and employment. McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). A county Department of Child Services is not required to provide evidence ruling out all possibility of change; rather, it need establish only that there is a reasonable probability that the parent's behavior will not change. In re Kay L., 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

At the termination hearing, evidence was presented that Father's involvement with the DCS dates back to 1999. Reports of domestic violence in 1999 and neglect in 2004 were

substantiated. Since 1999, Father has been arrested at least nine times. Father was ordered to pay child support in the amount of \$25.66 weekly, effective April 4, 2006. He failed to do so. He missed the majority of his parenting time visits, and unsupervised visitation was suspended after Father tested positive for marijuana on a drug screen.

While the CHINS cases involving the Children were pending, Father was twice incarcerated in the Indiana Department of Correction. Consequently, he was unable to complete in-patient substance abuse treatment recommended by Community Mental Health. In prison, Father has prepared for a GED exam, participated in AA meetings, and completed one phase of a substance abuse program. His projected prison release date is May 26, 2009.

Father contends that the trial court minimized his efforts to avail himself of educational, substance abuse, and parenting programs offered in prison and that his prior shortcomings were attributable to a lack of available services. However, a parent cannot claim failure to provide services as a ground for reversing a termination decision if the parent has not actively sought such services. See Jackson v. Madison Co. Dep't of Family and Children, 690 N.E.2d 792, 793 (Ind. Ct. App. 1998), trans. denied. The record does not disclose Father's affirmative efforts to seek additional services during the relevant time period. Furthermore, caseworker Nathan Cotrell testified that Father had the same services available to him during his first and second incarcerations in the DOC but complied only during the latter. Ultimately, we may not reweigh the evidence, as Father urges, to find that he has taken adequate measures to effectively parent the Children in the future.

Accordingly, the DCS presented clear and convincing evidence that the conditions

leading to the Children's removal would not, in reasonable probability, be remedied.

**Conclusion**

The DCS established by clear and convincing evidence the requisite elements to support the terminations of Father's parental rights to the Children.

Affirmed.

DARDEN, J., and ROBB, J., concur.