

**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:

ATTORNEYS FOR APPELLEE:

**RUTH A. JOHNSON  
LILABERDIA BATTIES**  
Batties & Associates  
Indianapolis, Indiana

**REBECCA L. MOSES**  
New Castle, Indiana  
  
**ROBERT J. HENKE**  
Indiana Department of Child Services  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

In the Matter of the Termination of the )  
Parent-Child Relationship of: D.D. II, D.D. and )  
C.G., Minor Children, )  
 )  
D.D., Father, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 49A02-0811-JV-1027

---

APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Marilyn A. Moores, Judge  
The Honorable Larry Bradley, Magistrate  
Cause No. 49D09-0802-JT-6679

---

**May 13, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

D.A.D. (“Father”) appeals the trial court’s order terminating his parent-child relationship with his children D.A.D., II; D.J.D.; and C.E.G.

We affirm.

### ISSUE

Whether clear and convincing evidence supports the trial court’s judgment terminating the parental rights of Father.

### FACTS

Father and C.L.G. (“Mother”) had three children: D.A.D. II (born May 24, 1998); D.J.D (born December 11, 2003); and C.E.G. (born August 11, 2006) (collectively, “the children”). C.E.G. tested positive for marijuana at birth, and Mother entered into an informal adjustment with the Department of Child Services (DCS). However, she failed to participate in the required services (including substance abuse treatment and screening) and admitted at the final hearing that she “kept smoking marijuana.” (Tr. 80).

On February 12, 2007, DCS filed a petition alleging that the children were Children in Need of Services (CHINS). That same day, Mother admitted the allegations of the petition, and the children were removed from the home of Mother and Father. On March 21, 2007, Father admitted the allegations of the petition – which included that he

ha[d] not established paternity for the children, ha[d] not contacted DCS regarding the children’s health, safety, or welfare, and ha[d] not come forward to successfully demonstrate to DCS the ability or willingness to appropriately parent the child[ren]. In addition, [DAD] ha[d] criminal history including arrests for disorderly conduct, driving with a suspended license and battery, and is not considered to be an appropriate placement for the children at this time.

(Ex. 2). Father was ordered to complete a parenting assessment and follow recommendations; to complete home based counseling and follow recommendations; to participate in random drug screens; to contact the DCS caseworker weekly; to obtain and maintain legal employment; and, to maintain suitable housing for himself and children.

During the ensuing year, Mother nor Father successfully participated in the services provided by DCS or complied with the trial court's orders. Therefore, on February 12, 2008, DCS filed a petition to terminate parental relationships.

On September 18, 2008, evidence was heard on the petition. During the hearing, Mother consented to the termination of her parental rights. Thereafter, the trial court continued to hear evidence as to Father.

The trial court admitted the CHINS petition, and the disposition and parental participation orders of March 21, 2007. Also admitted was the March 2007 parenting assessment of Father, which noted his long-term marijuana use and that he tested positive for cocaine at the time of the assessment. (Ex. 6). The assessment also expressed concern that Father "did not try to intervene and have [Mother] quit" using marijuana when she was pregnant, and that he did not "believe his substance abuse affect[ed] his ability to parent his children." *Id.*

Father acknowledged that he had been ordered to successfully complete home based counseling, and admitted that he had not done so. Father also acknowledged that he had been ordered to complete drug treatment, and had failed to complete three different programs to which he had been referred. He admitted that he had been ordered to submit to random drug screening, and had tested positive for marijuana and cocaine.

He testified that he had used marijuana “every day” since he “was about 12,” but had not used any in the past month. (Tr. 21). He testified further that he did not believe his use of marijuana affected his ability to parent. He testified that he was earning \$250 - \$350 weekly by working from 20 to 40 hours a week, but admitted that he had not provided any documentation of his employment to DCS (and offered none to the trial court).

Mother testified that there had been domestic violence between her and Father “about the whole time [they had] been together.” (Tr. 83). Mother also testified that Father had “smacked [her] in [her] face, . . . choked [her], . . . broken [her] arm,” and that the week before the hearing, he had “almost choked [her] to death and then . . . put a cigarette out on [her] forehead.” (Tr. 83).

Jessica Meyers, M.S.W. and the home-based counselor who had worked with the family, met with Father eleven times since May of 2008. She confirmed that Father did not complete home based counseling, and that in-home supervised visitation was never possible “because of the dirty screens.” (Tr. 46). Meyers further testified that she had discussed Father’s drug use with him, and that Father believed his marijuana use did not affect his parenting. Meyers also testified that, within the preceding week, Mother had reported the domestic violence incident, and that she had observed a cigarette burn on Mother’s forehead.

Kathy Kehlhusen, the mental health and addictions therapist treating Mother, also testified that within the past week, Mother reported to her that Father touched a cigarette to her face. Kehlhusen testified that she saw a mark on Mother’s forehead, and Mother had reported other incidents of domestic violence by Father.

Nina Armstrong, the DCS case manager for the family, testified that she referred Father to four substance abuse treatment programs; that he failed to complete any of them; and that he tested positive for drugs on numerous screenings. She testified that Father did not complete home based counseling, did not maintain weekly contact with her, and provided no documentation of his employment. Armstrong testified that she could not recommend that the children be reunified with Father “due to . . . domestic violence issues,” his inability to maintain drug abstinence, and his belief that his use of drugs does not affect his ability to parent his children. (Tr. 107). Armstrong also testified that the children were together in a therapeutic foster home, where they were happy, and they had “expressed that they don’t want to go back” with their parents. (Tr. 108). In addition, Armstrong testified that the DCS plan for the children was adoption, that the foster parents were willing to adopt the children, and that termination of Father’s parental relationship was in the children’s best interest because they “deserve permanency” and were suffering from “[t]he feeling of not knowing where you’re going to be.” (Tr. 108).

Finally, Sue Waddell, the GAL for the children, testified that she had visited with the children several times, and had observed a visitation at which Father “sat at a table and didn’t really interact much with the children.” (Tr. 27). Waddell opined that it was not in the children’s best interest to be reunified with Father, due to his positive drug screens and his failure to complete services after having “been given adequate time.” (Tr. 29). Waddell testified that the children “need a secure, safe environment,” which was “where they are now,” and recommended adoption by the foster parents. (Tr. 28).

The trial court issued its findings of fact and conclusions of law on September 23, 2008. Its findings reflected the evidence recounted above. It also found

the reasonable probability that the conditions that led to the removal and continued placement of the children outside the home will not be remedied by [Father]. [Father] has not adequately addressed his substance abuse though he was provided four referrals and has had over seventeen months to do so. It is a major concern that at this point in the proceedings, he still feels that his marijuana use does not affect his ability to parent. Placement of the children with [Father] remains inappropriate given his history of violence and unaddressed substance abuse.

(App. 16). It concluded that termination was in the best interest of the children, and ordered the parental relationship terminated.

#### DECISION

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 responsibility. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002) (citing *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied, trans. denied*). The purpose of terminating parental rights is not to punish parents but to protect children. *Id.*

The trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *R.S.*, 774 N.E.2d at 930. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* Moreover, the trial court need not wait until the child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship.

*Id.* The parent’s habitual pattern of conduct is relevant to determine whether there is a substantial probability of future neglect or deprivation of the child. *Id.*

The appellate court will not set aside the trial court’s judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
- (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 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.

Ind. Code §§ 31-35-2-4(b)(2), 31-35-2-8(a).

Father argues that the termination order must be reversed because DCS “failed to prove that the conditions that caused the removal of the children from the home would reoccur.” Father’s Br. at 5. Specifically, he argues that Mother’s marijuana use was the condition that led to the removal, and “the parties were no longer together” because he had “remov[ed] . . . Mother from his home.” *Id.* at 5, 7. Contrary to Indiana Appellate Rule 21(C), Father does not cite to the record for his assertion that he “remov[ed]”

Mother from his home. Further, Mother's testimony seems to indicate that she and Father continued to live together until the week before the hearing, when she "got away from him." (Tr. 95). Further, Mother also testified that Father had "been calling [her], telling [her] that he want[ed] [her] to come back" as recently as "yesterday." *Id.* The evidence does not support Father's assertion that Mother will not be in his home.

The children were removed from the parents' home because Mother was unable to cease her marijuana use. Father did not intervene to curtail Mother's marijuana use when she was pregnant or after she gave birth to his child, who tested positive for marijuana. After the children were removed, Father admitted that he had failed to demonstrate the ability to appropriately parent his children, and that he had been ordered to comply with specific conditions, including the successful completion of various services offered by DCS. Father was found to have a substance abuse problem; had tested positive for cocaine and marijuana; and failed to complete any of the treatment programs which he was referred to by DCS. Father continued to use marijuana; failed to complete home based counseling; and has demonstrated instances of violent behavior. Finally, of particular concern to the trial court and indisputably established by the evidence, Father failed to understand that his marijuana use affected his ability to properly parent his children. The trial court did not err when it found that clear and convincing evidence established that the conditions leading to the children's removal would not be remedied by Father.

Father also argues that DCS “did not present clear and convincing evidence that continuation of the parent-child relationship poses a threat to the well-being of the children.” Father’s Br. at 12. The statute provides that it must be proven that

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

I.C. §§ 31-35-2-4(b)(2), 31-35-2-8(a) (emphasis added). The statutory provision is written in the disjunctive. Therefore, the trial court need find by clear and convincing evidence only one of the two requirements of subsection (B). See *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied, cert. denied*. Accordingly, having found that the evidence supports the trial court’s finding of (B)(i), we need not address Father’s argument as to (B)(ii).

Father also asserts that “DCS did not present clear and convincing evidence that termination of the parent-child relationship is in the best interests of the children.” Father’s Br. at 12, 15. We cannot agree.

The trial court found that the children had been out of [Father]’s care for an extended period of time which has resulted in the children suffering from a lack of permanency. Termination would provide the opportunity for the children to be adopted into a secure, safe environment where they know they would remain and have their needs met.

(App. 17).

The evidence before the trial court established that the children had been removed from Father’s care for more than seventeen months. During that time, Father continued

to use illegal drugs, despite counseling and limited attendance in a treatment program. Father remained steadfast in his belief that his marijuana use did not affect his ability to parent his children. Father also failed to take advantage of the opportunities provided by DCS to address his addiction and to demonstrate the ability to appropriately parent his children. Father's behavior was not in the children's best interests, and caused them to suffer. According to the DCS case manager and the GAL, the children lacked the feeling of permanency that they needed and deserved. We find that clear and convincing evidence supported the trial court's conclusion that termination was in the best interest of the children.

Affirmed.

BAILEY, J., and ROBB, J., concur.