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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF D.L.	)	
	)	
JAMES L., Father	)	
	)	
Appellant-	)	
	)	
vs.	)	No. 82A04-0811-JV-684
	)	
VANDERBURGH COUNTY DEPARTMENT OF CHILD SERVICES	)	
	)	
Appellee-	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett Niemeier, Judge
Cause No. 82D01-0804-JT-34

July 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

James L. ("Father") appeals the involuntary termination of his parental rights to his son, D.L. On appeal, Father makes two allegations of error, namely, (1) that the trial court abused its discretion in denying his motion to continue the termination hearing, and (2) that there is insufficient evidence supporting the trial court's judgment. Concluding that the trial court did not abuse its discretion in denying Father's motion to continue and that the Indiana Department of Child Services, Vanderburgh County ("VCDCS") provided clear and convincing evidence to support the trial court's judgment, we affirm.

Father is the biological father of D.L., born on April 30, 2001. The evidence most favorable to the trial court's judgment reveals that, on or about January 5, 2007, D.L.'s natural mother, Amanda V.R. ("Mother")[1], tested positive for methamphetamine and THC and was arrested on several charges, including possession of methamphetamine and child neglect. Five-year-old D.L. was in Mother's sole care and custody at the time of Mother's arrest, and Father was unavailable to care for D.L. because he was incarcerated at the Vanderburgh County Jail on felony burglary and other charges. Consequently, D.L. was taken into emergency protective custody and placed in relative foster care with his maternal grandmother ("Grandmother") several days later. This was not the first time the VCDCS had been involved with this family. D.L. had been adjudicated a child in need of services ("CHINS") and placed in relative foster care with Grandmother from October 22 through December 8, 2004.

[1] Mother does not participate in this appeal. Consequently, we will limit our recitation of the facts to those pertinent solely to Father's appeal.

On January 9, 2007, the VCDCS filed a petition alleging D.L. was a CHINS. D.L. was subsequently found to be a CHINS by the court and formally removed from Father's care. In February 2007, Father signed an Agreement for Parental Participation wherein he agreed to comply with court orders and to participate in various services in order to achieve reunification with D.L. Father, however, remained incarcerated throughout the duration of the CHINS proceedings and therefore was unable to participate in court-ordered services through the VCDCS. Also during the CHINS case, Father made no attempt to contact D.L. or to maintain a parental relationship with D.L.

On April 11, 2008, the VCDCS filed a petition to involuntarily terminate both Mother's and Father's parental rights to D.L. During a preliminary hearing held on or about May 21, 2008, the trial court set an evidentiary hearing on the VCDCS's termination petition. The two-day hearing was scheduled for August 5 and 8, 2008, over Father's objection.

At the time of the termination hearing, Father, who by that time had been convicted of the pending burglary charge, remained incarcerated and was serving a fifteen-year sentence on his conviction. Although Father appeared in person for the termination hearing and was represented by counsel, he did not make a motion to continue the hearing at that time, either orally or in writing, nor had he filed a motion to continue prior to the hearing. At the time of the termination hearing in 2008, Father's earliest projected release date was not until sometime in the year 2012.

Mother voluntarily relinquished her parental rights to D.L. at the commencement of the second day of trial on August 8, 2008. The trial court thereafter took the entire

matter under advisement, and on September 29, 2008, the court issued an order terminating Father's parental rights to D.L. This appeal ensued.

Motion to Continue

We first consider Father's contention that the trial court abused its discretion in denying his motion to continue the termination hearing. In making this assertion, Father claims he "presented good cause for the continuance and was prejudiced by the trial court's denial of his [m]otion due to its effect on his ability to demonstrate changed circumstances to the court." Appellant's Br. p. 8. The VCDCS counters that Father never filed a motion to continue the termination hearing, but instead simply objected to the setting of the matter for an evidentiary hearing during the preliminary hearing in May 2008. The VCDCS directs our attention to Indiana Code Section 31-35-2-6 (providing that whenever a hearing is requested, the trial court *shall* commence a hearing on the termination petition not more than 90 days after the termination petition is filed) and argues that "[b]ased on Indiana statute, the trial court was required to proceed to hearing on the petition to terminate parental rights based on the [VCDCS's] request for hearing. As such, the trial court did not err in setting the matter for hearing over Father's objection." Appellee's Br. p. 6.[2] The VCDCS further asserts that even if Father's objection to the setting of the termination matter for an evidentiary hearing is viewed by this Court as a motion to continue, the trial court's denial of Father's motion was nevertheless proper under the circumstances of this case.

[2] We observe that although the parties do not dispute the fact that the VCDCS formally requested an evidentiary hearing on its involuntary termination petition be set during the May 2008 hearing, neither party substantiates this fact with evidence from the record.

At the outset, we acknowledge that the decision whether to grant or to deny a non-statutory motion to continue rests within the sound discretion of the trial court. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), trans. denied. Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each circumstance. J.M. v. Marion County Office of Family & Children, 802 N.E.2d 40, 43 (Ind. Ct. App. 2004), trans. denied. A decision on a motion for continuance will be reversed only upon a showing of an abuse of discretion and prejudice resulting from such an abuse. Id.

The Indiana Supreme Court has explained that an abuse of discretion analysis consists of an "evaluation of facts in relation to legal formulae. In the final analysis, the reviewing court is concerned with the reasonableness of the action in light of the record." Id. at 44 (citing Tapia v. State, 753 N.E.2d 581, 585 (Ind. 2001)). Thus, a trial court's ruling should be set aside only if it is clearly against the logic and effect of the facts and circumstances before the court, and we will not substitute our judgment for that of the trial court. Id.

Turning to the merits of Father's argument, we first observe that the only evidence provided on this matter by either party is contained in a single entry in the Chronological Case Summary, which reads in pertinent part as follows: "05/21/08 . . . Father by counsel, Thomas Krochta; In person. Termination of Parental Rights set for hearing August 5 at 8:00 for half day and August 8 at 1:00 for half day over the objection of Mr. Krochta. . . ." Appellant's App. p. 3. The record on appeal does not contain a transcript of the May 2008 hearing, a copy of any written motion to continue that may have been filed, or any

other evidence concerning Father's objection made during the May 2008 hearing. Consequently, we have no way of determining whether Father in fact made a motion to continue, pursuant to Indiana Trial Rule 53.5, nor can we discern the reasons asserted by Father in support of his request for a delay. In failing to support his allegation of error with cogent argument, including citations to authority, as well as those portions of the record relied upon, Father has waived this issue for review. See Ind. Appellate Rule 46(A)(8)(a).

Waiver notwithstanding, assuming, *arguendo*, that Father's objection during the May 2008 hearing did constitute a motion to continue pursuant to Trial Rule 53.5, Father still cannot prevail under the facts of this case because he has failed to demonstrate that he suffered any prejudice as a result of the trial court's denial of his motion. In his brief to this Court, Father makes the general assertion that he was prejudiced by the trial court's denial of his request for a continuance because it affected his ability to prove that there is a reasonable probability the conditions resulting in D.L.'s removal from Father's care will be remedied.[3] Father fails to show, however, that he ever provided the trial court with evidence, established by affidavit or otherwise, demonstrating "good cause" for the requested delay. See Indiana Trial Rule 53.5. Rather, it appears that Father was simply requesting more time to complete services, and the trial court was in a position where it could only speculate as to whether the granting of additional time, in and of

[3] Father also claims on appeal that he requested a continuance of the trial date based on his "inability to assist his counsel in preparing for trial." Appellant's Br. p. 10. Father thereafter summarily concludes that in so doing, he presented good cause for his request for a continuance and was prejudiced by the trial court's denial of his motion without further explanation. In failing to support his allegation of error with cogent argument Father has also waived this issue for review. See Ind. Appellate Rule 46(A)(8)(a).

itself, would likely aid Father in his efforts at reunification in light of Father's lengthy criminal history and current incarceration.

This Court has previously observed that there is a cost in delaying the adjudication of termination cases in that they impose a strain upon the children involved and exact "an intangible cost to their lives." In re E.E., 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), trans. denied. While continuances may certainly be necessary to ensure the protection of a parent's due process rights, courts must also be cognizant of the strain these delays place on a child. In re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), trans. denied. Father fails to explain how he was denied due process of law in the present case. The record reveals that Father appeared in person at the termination hearing and fully participated in the proceedings by testifying about his changed conditions and his desire to maintain a parental relationship with D.L. Father was also zealously represented by counsel, who cross-examined witnesses and presented favorable evidence concerning Father's successful participation in various programs while incarcerated. Moreover, Father's decision to attend and participate in the August 5, 2008 evidentiary hearing, both in person and by counsel, without making a motion to continue either prior to or at the commencement of the hearing, suggests that Father had abandoned any objection he may have had previously to the trial court's setting of the matter for an evidentiary hearing.

Based on the foregoing, and in light of the fact that Father's earliest projected release date was not until the year 2012, we conclude that the trial court's decision to set the termination matter for hearing was reasonable in light of the facts and circumstances before it. See J.M., 802 N.E.2d at 44-45 (concluding that trial court did not abuse its

discretion by denying mother's motion for continuance where mother failed to show she was prejudiced by the trial court's refusal to grant motion). We therefore find no error.

Sufficiency of the Evidence

Turning next to Father's allegation regarding the sufficiency of the evidence supporting the trial court's judgment, we first acknowledge 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). Thus, when reviewing the trial court's judgment, 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 therefrom that are most favorable to the judgment. Id.

Here, the trial court's termination order contained specific findings of fact and conclusions thereon. When reviewing findings of fact and conclusions of law entered in a case involving a termination of parental rights, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Second, we determine whether the findings support the judgment. Id. 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; see also Bester, 839 N.E.2d at 147. 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. Bester, 839 N.E.2d at 147.

"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. Moreover, because termination severs all rights of a parent to his or her child, the involuntary termination of parental rights is arguably one of the most extreme sanctions a court can impose; consequently, such a sanction is intended as a last resort, available only when all other reasonable efforts have failed. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied. Nevertheless, parental rights are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate a parent-child relationship. Id. Because the purpose of terminating parental rights is to protect the child, not to punish the parent, parental rights may be properly terminated when a parent is unable or unwilling to meet his or her parental responsibilities. K.S. 750 N.E.2d at 836.

In order to terminate a parent-child relationship, 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; [and]

(C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2); see also Ind. Code § 31-35-2-8. The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992); see also Ind. Code § 31-37-14-2.

Father challenges the sufficiency of the evidence supporting the trial court's judgment with regard to Indiana Code sections 31-35-2-4(b)(2)(B) and (C) set forth above. We pause, however, to observe that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the VCDCS was required to establish, by clear and convincing evidence, only one of the two requirements of subsection (B). See L.S., 717 N.E.2d at 209. Nevertheless, the trial court found that both prongs of Indiana Code Section 31-35-2-4(b)(2)(B) were satisfied. We begin our review by considering whether clear and convincing evidence supports the trial court's findings regarding Indiana Code Section 31-35-2-4(b)(2)(B)(i).

A. Remedy of Conditions

Father asserts on appeal that the VCDCS failed to present sufficient evidence proving that there is a reasonable probability the conditions resulting in D.L.'s removal and continued placement outside his care will not be remedied. Specifically, Father argues that not only has he been participating in services while incarcerated but that he has been "benefitting from his incarceration and rehabilitation in the way that is ideally hoped for by our criminal justice system." Appellant's Br. p. 16. Father also insists that the evidence proves there is "every indication that upon his release, [F]ather [will] be

able to obtain employment [and] housing, avoid criminal behavior, and benefit from services resulting in reunification." Id. at 16-17.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children 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. Additionally, 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. Moreover, we have previously explained that the Indiana Department of Child Services (here, the VCDCS) is not required to rule out all possibilities of change; rather, it need establish only that there is a reasonable probability the 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 D.L.'s removal and continued placement outside of Father's care will not be remedied, the trial court made the following pertinent findings:

> 6. At disposition, [D.L.] was unable to be placed with [Father] due to [Father's] continued incarceration.

> 7. [D.L.] has never been in the care and custody of [Father] during the pending [CHINS] matter as he has always been in custody. [Father] has never had full legal or physical custody of [D.L.] during the child's lifetime.
> 8. [Father] has been convicted of several misdemeanors in the past. [Father] was [also] sentenced on a felony to the Vanderburgh County SAFE House (a work release facility) in 1998. At the time of trial on August 5, 2008, [Father's] projected release date from the Department of Correction is the year 2012.
> 9. Prior to the CHINS matter and while not incarcerated[,] [Father] knew that [Mother] was using illegal substances yet he took no action to physically remove [D.L.] from the situation and never petitioned the juvenile court for custody of his son.
> 10. [Father] was aware that incarceration was a possible result of criminal activity. . . . Despite knowing that he could be incarcerated and separated from his child as a result, [Father] chose to commit the criminal act of felony-level burglary which led to his present incarceration rather than to obey the law and maintain a bond with his child.
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> * * * * *
>
> 12. [Father's] history of involvement with the criminal justice system, incarceration at the time of trial, and likelihood of several more years of incarceration indicate that he is unlikely to remedy the reasons for continued placement of the child outside his care.
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> * * * * *
>
> 17. There is no guarantee that [F]ather will be able to bond with the child, seek legal custody of the child, parent the child appropriately, and obey the law following release from his current incarceration. ...

Appellant's App. pp. 2-4. A thorough review of the record leaves us convinced that sufficient evidence supports the trial court's findings set forth above. These findings, in turn, support the trial court's ultimate decision to terminate Father's parental rights to D.L.

Although Mother was D.L.'s sole caretaker when he was initially taken into protective custody, the VCDCS was unable to place D.L. with Father due to Father's incarceration. At the time of the termination hearing, Father was still unable to provide

D.L. with the minimal necessities of life, including food, clothing, or a safe and stable home, due to Father's continuing incarceration. Moreover, Father's earliest projected release date as of the date of the termination hearing was in 2012, after which Father would still need to participate in and successfully complete court-ordered services before reunification with D.L. could be considered.

Notwithstanding Father's inability to care for D.L. at the time of the termination hearing, Father claims his parental rights should not have been terminated because the evidence shows there is "every indication" that, upon his release, he will be able to obtain employment and housing, avoid criminal behavior, and benefit from services resulting in reunification. Appellant's Br. p. 17. In support of his argument, Father directs our attention to various programs he completed while incarcerated, and to a progress report from the Branchville Correctional Facility indicating Father had "demonstrated a proactive awareness by having completed his interventional assignments[,]" and that Father's "prospect for a favorable return to society is enhanced" should he maintain his current course. Appellant's App. p. 124.

Although we commend Father for taking positive steps to better himself while incarcerated by participating in various services including parenting, substance abuse, and anger management classes, as well as by obtaining his G.E.D., all of which resulted in Father receiving significant "time cuts" off his fifteen year sentence, there nevertheless remains ample evidence in the record to support the trial court's findings set forth above. The record reveals that, in addition to Father's unavailability to parent D.L. at the time of the termination hearing and for a minimum of more than three additional years due to his

incarceration, Father has a lengthy history of involvement with the criminal justice system, dating back to when he was a juvenile. Moreover, despite having managed to stay out of "trouble" for an extended period of time in the past, Father admitted that he had been unable to sustain this success, resulting in his current fifteen-year sentence at the Department of Correction. Tr. p. 51. We have previously acknowledged that where there are only temporary improvements and the parent's "pattern of conduct shows no overall progress, the court might reasonably find that the problematic situation will not improve." Matter of D.L.W., 485 N.E.2d 139, 143 (Ind. Ct. App. 1983). Father also admitted that, prior to his arrest and current incarceration, he had become aware of the fact that Mother had relapsed and was using drugs while D.L. was in her custody but he failed to notify authorities, failed to file a request for custody of D.L, and failed to refrain from engaging in criminal activities, even though he knew such conduct could result in his incarceration.

Testimony from VCDCS case manager Erica Rasler provides further support for the trial court's findings. Rasler testified that she was never able to recommend placement of D.L. with Father due to Father's incarceration. Rasler further informed the court that D.L. had never lived with Father on a full-time basis, that she had no personal knowledge that the courses Father had taken while incarcerated had actually benefitted him in terms of parenting skills, and that Father had never initiated any communication between himself and D.L. even though she had informed Father that he could write D.L. letters. This Court has previously stated that "the failure to exercise the right to visit one's child demonstrates a lack of commitment to complete the actions necessary to

preserve the parent-child relationship." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Although Father was not able to visit with D.L. in person, the fact that Father never attempted to communicate with D.L. whatsoever throughout the duration of the CHINS and termination proceedings likewise suggests a lack of commitment to preserving the parent-child relationship.

Based on the foregoing, we conclude that clear and convincing evidence supports the trial court's finding that there is a reasonable probability the conditions resulting in D.L.'s removal from Father's care will not be remedied. The trial court was within its discretion to judge Father's credibility and to weigh his testimony of changed conditions against the significant evidence demonstrating Father's habitual pattern of neglect of D.L., Father's lengthy history of criminal activity, and Father's past, present, and future inability to provide a safe, stable, and nurturing home environment for D.L. Father's arguments to the contrary amount to an invitation to reweigh the evidence, and this we may not do. D.D., 804 N.E.2d at 265.

B. Best Interests

Father also challenges the sufficiency of the evidence supporting the trial court's finding that termination of Father's parental rights is in D.L.'s best interests. 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 Department of Child Services and look to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 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. Moreover, we have previously held that the recommendations of the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In addition to the findings set forth previously, the trial court also made the following pertinent findings in determining that termination of Father's parental rights is in D.L.'s best interests:

> 13. [Father's] history of repeated criminal activity . . . [has] resulted in periods of incarceration, preventing him from providing supervision and stability for [D.L.]. [D.L.] is further endangered by his father's failure to take action to protect the child when [Father] was aware that the child was in an environment in which he was exposed to illegal substances by [M]other.
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> 14. The child is thriving in his current placement and has bonded to his maternal grandmother, the current foster parent. . . . [Father] has made no or little attempt to contact [D.L.] while incarcerated.
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> * * *
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> 16. The plan of adoption is in [D.L.'s] best interests. Adoption by the grandmother will allow [D.L.] to remain in placement with his half-sibling who is also being adopted by the grandmother. The child has been in the grandmother's care for approximately nineteen (19) months.
>
> 17. The [VCDCS] considered guardianship as an alternate plan for [D.L.]. The family case manager and Court Appointed Special Advocate do not recommend guardianship as the appropriate goal for [D.L.] due to [Father's] history of incarceration and the length of time that [F]ather will most likely continue to be incarcerated. [D.L.] has waited over a year and a half for permanency[.] [D]uring that time, he has bonded to his grandmother and sibling in his current placement. There is no guarantee that [F]ather will be able to bond with the child, seek legal custody of the child, parent the child appropriately, and obey the law following release from his

> current incarceration. Further, guardianship will most likely not provide financial assistance for the child that adoption has the potential to provide.
>
> 18. Termination of the parental rights of [Father], followed by adoption, is in the best interests of the child [D.L.]. [D.L.] is in immediate need of permanency and should not be required to wait for [Father] to be released from prison to have such permanency established. It is not in [D.L.'s] interests to be raised by the State of Indiana during the remainder of [Father's] incarceration. Being a ward of the State can create hardships upon a child; at times, there are activities that foster children cannot participate in, or that may be more difficult for foster children to participate in that other children get to take advantage of.

Appellant's App. pp. 2-4. These finding, too, are supported by the evidence.

During the termination hearing, Rasler recommended that Father's parental rights be terminated and that D.L. be adopted by Grandmother. When asked why that was her recommendation, Ralser replied, "[D.L.'s] been there, uh, the whole time we've been involved. He's with his sibling. . . he's doing well, [and] he's healthy and happy there." Tr. p. 11. When asked to explain why she felt her recommendation was in D.L.'s best interests, Rasler stated, "[Father] has been incarcerated and will continue to be so for at least three more years." Id. at 11-12. Rasler went on to explain, "[D.L.] has been involved with us for over a year and he needs permanency. . . . He needs a stable environment. . . . [W]ith his grandmother[,] he has a stable environment, he . . . knows that he'll be taken care of there. . . . [H]e doesn't have to worry about where he's gonna (sic) be or where he's gonna (sic) go." Id. at 14.

Similarly, Court Appointed Special Advocate ("CASA") Kris Lutz also recommended termination of Father's parental rights. In so doing, Lutz stated that she believed that D.L. needed permanency and stated, "[D.L.] can no longer wait for that

permanency. Um. Even though we may empathize with his father. . . because termination of parental rights is . . . a permanent action legally, . . . there are things that children who are wards of the court cannot do, that restrict them[,] [a]nd [D.L.] needs to be able to move on . . . and live [his] life as a more normal child than he can right now." Id. at 33.

Finally, although not cited by either party, our review of this case is guided by the Indiana Supreme Court's recent decision in In re G.Y., 904 N.E.2d 1257 (Ind. 2009). In G.Y., the Court concluded that the State had failed to present clear and convincing evidence that termination of the incarcerated mother's parental rights was in G.Y.'s best interests. In so doing, the Court found of particular significance the following facts: (1) that the mother's entire criminal history consisted of offenses that were committed *before* the child's conception, and that for the first 20 months of G.Y.'s life there was no indication that the mother was anything but a fit parent; (2) that the mother had made a good-faith effort to complete all required services for reunification while incarcerated as well as had secured gainful employment and suitable housing to occur upon her release; (3) that despite the fact G.Y. had grown attached to his foster family during the CHINS case, the mother had maintained a consistent, positive relationship with G.Y. despite her incarceration and had demonstrated a commitment to reunification with G.Y. from the time of her arrest; and (4) that despite testimony from the case manager and child advocate regarding G.Y.'s need for permanency and stability, the Guardian ad Litem had nevertheless reported observing a mother-child bond between G.Y. and his mother and

there was no evidence to show that permanency through adoption would be beneficial to G.Y. or that remaining in foster care until reunited with his mother would be harmful.

Although some factual similarities exist between G.Y. and the current case, in that Father completed multiple services while incarcerated including parenting, substance abuse, and anger management classes, as well as obtained his GED, significant differences between the two cases makes them easily distinguishable. Unlike the mother in G.Y., here, prior to his incarceration, Father had never been the sole caretaker for D.L. In addition, Father not only committed his most recent criminal offense long after D.L. was born, but he admitted to knowing that he risked incarceration and further separation from D.L. by doing so. Also significant, unlike the facts in G.Y. where the record was completely void of any evidence of neglectful conduct by Mother toward the child, in the present case, Father admitted that prior to his current arrest and incarceration, he had been aware of the fact that D.L.'s mother had suffered a relapse and was using illegal substances while D.L. was in her custody but had failed to take any action to notify the authorities or to gain custody of D.L., thereby further endangering D.L.'s health and safety. Finally, unlike the facts in G.L., Father never attempted to maintain contact with D.L. following his arrest and incarceration, Father was not eligible for release from incarceration for more than three years following the date of the termination hearing, and both the case manager and CASA recommended termination of Father's parental rights, without reservation, based on D.L.'s need for permanency.

This Court has previously recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful

relationships with their children." Castro v. State Office of Family & Children, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006), trans. denied. Based on the totality of the evidence, including Father's habitual pattern of criminal conduct, lack of parental bond with D.L., and current incarceration, coupled with the testimony from both the VCDCS case manager and CASA recommending termination, we conclude that clear and convincing evidence supports the trial court's finding that termination of Father's parental rights is in D.L.'s best interests. See, e.g., In re A.I., 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of child advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), trans. denied. This finding, in turn, supports the trial court's ultimate decision to terminate Father's parental rights to D.L.

Conclusion

A trial court need not wait until a child is "irreversibly influenced" such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F., 762 N.E.2d at 1253. Even assuming Father will eventually develop into a suitable parent, D.L. will be approximately 11 years old by the time of Father's earliest projected release date. Father is therefore unable to remedy the conditions necessitating D.L.'s removal in a meaningful time frame. D.L. should not have to wait to enjoy the permanency that is essential to his healthy development and overall well-being. See Castro, 842 N.E.2d at 375 (concluding that termination of parent-child relationship was in child's best interests where child was in need of permanency

and stability and was doing well in current placement, and where there was no guarantee incarcerated parent would become a suitable parent or obtain custody once released).

A thorough review of the record reveals that the trial court's judgment terminating Father's parental rights to D.L. is supported by clear and convincing evidence. We therefore find no error.

Affirmed.

Crone, J., and Bradford, J., concur.