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 M.S.:

ANDREW C. KRULL
Indianapolis, Indiana

ATTORNEY FOR APPELLANT K.S.:

JAMES A. EDGAR
J. Edgar Law Offices, Prof. Corp.
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE INDIANA DEPARTMENT OF CHILD SERVICES:

ELIZABETH G. FILIPOW
JESSICA W. KRUG
Indianapolis, Indiana

ATTORNEY FOR APPELLEE CHILD ADVOCATES, INC.:

BARRY A. CHAMBERS
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.S., MINOR CHILD, AND HIS MOTHER, M.S., AND HIS FATHER, K.S.,	)	
M.S., Mother,	)	
Appellant-Respondent,	)	
AND	)	
K.S., Father,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A04-0901-JV-9
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	

Appellee-Petitioner,	)
	)
AND	)
	)
CHILD ADVOCATES, INC.,	)
	)
Appellee-Guardian Ad Litem.	)

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Danielle Gaughan, Magistrate
Cause No. 49D09-0804-JT-17503

August 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

CASE SUMMARY

Appellants-Respondents K.S. ("Father") and M.S. ("Mother") appeal the involuntary termination of their parental rights to their son, S.S. On appeal, both parents claim there is insufficient evidence supporting the juvenile court's judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

Father and Mother are the biological parents of S.S., born on November 21, 1995. On December 31, 2006, the Indiana Department of Child Services, Marion County, ("MCDCS") investigated a report of abuse and neglect involving Father and then eleven-year-old S.S. Upon arriving at the family home, MCDCS case workers Ashley Reed and Austin Hollabaugh found the house to be filthy and in disarray. It smelled strongly of

cigarette smoke and there was a port-o-pot in the living room. In addition, Father was intoxicated and the case workers observed a bruise on S.S.'s head. Based on these conditions, the local police removed S.S. from the home and took him to Youth Emergency Services. At the time of S.S.'s removal, Father had sole legal custody of S.S., and Mother, who is diagnosed with Schzophrenia, was living at the Julian Group Home.

On January 25, 2007, the MCDCS filed a petition alleging S.S. to be a child in need of services ("CHINS"). A hearing was held on the same day and the juvenile court determined that returning S.S. to the family home would be contrary to S.S.'s safety and welfare. S.S. was made a ward of the MCDCS and an initial hearing on the CHINS petition was ordered for February 8, 2007.

Father and Mother both appeared in person and were represented by counsel at the initial hearing held on February 8, 2007. Father entered an admission to the CHINS petition and the juvenile court found S.S. to be a CHINS as to Father. The juvenile court then proceeded to disposition as to Father and issued a Participation Decree wherein it ordered Father to successfully complete certain goals in order to achieve reunification with S.S., including, but not limited to the following: (1) maintain safe and suitable housing; (2) complete age-appropriate parenting classes and be able to demonstrate newly learned skills; and (3) comply with any current or future court orders to engage in programs or to obtain assessments without delay. At the conclusion of the hearing, S.S. remained a ward of the MCDCS, but he was returned to Father's care on a temporary in-home trial visit and intensive family preservation services were put into place.

Mother, on the other hand, denied the allegations of the CHINS petition during the initial hearing. She later recanted during a subsequent hearing held on March 22, 2007, and signed an Agreed Entry wherein she admitted S.S. was a CHINS as set forth in Section 5(B) of the MCDCS's petition. Section 5(B) of the MCDCS's CHINS petition reads as follows: "[Mother] is unable to appropriately parent [S.S.] at this time. She lives at the Julian Group Home in Indianapolis. In addition, [Mother] is not allowed to be unsupervised with [S.S.] pursuant to a safety plan, which resulted from her reportedly attempting to choke [S.S.] in 2004." Pet. Ex. 1, p. 2. The Agreed Entry further provides that in order to achieve reunification with S.S. Mother was required to, among other things: (1) maintain regular and timely visitation with S.S.; (2) successfully complete individual and family counseling as well as age-appropriate parenting classes; (3) submit to a drug and alcohol assessment and follow all resulting treatment recommendations; (4) continue her current mental health treatment and follow all recommendations; and (5) successfully participate in and complete intensified home-based services. Mother also agreed that if S.S. was ever returned to her care, she would maintain clean, safe, and suitable housing, as well as obtain a legal and stable source of income adequate to support all household members, including S.S.

On May 1, 2007, S.S. was again removed from the family home, and the temporary in-home trial visit with Father was terminated after allegations of medical neglect were substantiated. Mother, who still resided at the Julian Group Home, remained unavailable to parent S.S. Consequently, S.S. was placed in therapeutic foster care. At the time S.S. was placed in foster care, he was significantly behind his peers in

school academically. S.S. also had serious problems with his personal hygiene and self-esteem, and he suffered with encopresis and enuresis.[1]

Throughout the CHINS case, Father was offered numerous services including a parenting assessment, parent mentor, drug and alcohol assessment, several intensive out-patient drug treatment programs ("IOPs"), in-patient drug detoxification program, and supervised visits with S.S. through Dockside Services. Father also received intensive home-based services through the Dawn Project, a program that provides community-based wrap-around services for "high need" families. Tr. p. 48.[2] Father's participation in services throughout the CHINS case, however, was inconsistent and ultimately unsuccessful. For example, Father participated in a parenting and substance abuse assessment in September 2007. During this assessment, Father reported that he began drinking alcohol at the age of five, and that shortly before the assessment, he had been drinking approximately thirty beers a day. Father nevertheless denied having a drinking problem and failed to successfully complete the recommended IOP despite receiving multiple referrals. Father did eventually participate in a fourteen day in-patient detoxification program, but was later observed by caseworkers and service providers on multiple occasions appearing intoxicated and smelling of alcoholic beverage. Father's participation in visitation with S.S. was also sporadic, and he was consistently observed by case workers wearing filthy clothes, appearing disheveled and disoriented, and having

[1] Encopresis is involuntary fecal soiling. Enuresis is involuntary urination.

[2] For clarification purposes, we note that Father and Mother each properly submitted Transcripts of the termination hearing. Because Mother's Transcript appears to be the original transcript prepared by the Marion Superior Court Reporter, and Father's a copy thereof, we cite to Mother's Transcript throughout this Opinion.

greasy hair and strong body odor. In addition, Father refused to clean his house despite repeated requests to do so by the MCDCS and despite offers of help from service providers.

Mother also failed to successfully complete court-ordered dispositional goals. Although there appeared to be a friendship bond between Mother and S.S., her attendance at scheduled visits was inconsistent. Mother was also unable to resolve her mental health issues and resided at the Julian Group Home throughout the duration of the underlying proceedings. She therefore never obtained suitable housing or secured employment sufficient to support herself and S.S., and she never successfully completed home-based services.

On April 18, 2008, the MCDCS filed a petition with the juvenile court requesting the involuntary termination of both Father's and Mother's parental rights to S.S. A two-day evidentiary hearing commenced on September 23, 2008, and concluded on October 28, 2008. Father failed to attend both days of the termination hearing. Mother appeared for the first day, but was not present on the second day. At the conclusion of the termination hearing, the juvenile court took the matter under advisement, and on November 20, 2008, issued its judgment terminating both Father's and Mother's parental rights to S.S. This appeal ensued.

DISCUSSION AND DECISION

Father and Mother each challenge the sufficiency of the evidence supporting the juvenile court's judgment terminating their respective parental rights to S.S. In so doing, Father and Mother both claim the MCDCS failed to establish by clear and convincing

evidence (1) that there is a reasonable probability the conditions resulting in S.S.'s removal from their care and custody will not be remedied or that continuation of the parent-child relationship poses a threat to S.S.'s well-being, and (2) that termination of their respective parental rights is in S.S.'s best interests.

I. Standard of Review

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 juvenile 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, 264 (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 juvenile court made specific findings in ordering the termination of Father's and Mother's respective parental rights. Where the juvenile court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). 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; 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 264. 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 thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

II. Analysis

At the outset, we readily acknowledge that "[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*. However, the juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding an involuntary termination of the parent-child relationship. *K.S.*, 750 N.E.2d at 837. Parental rights may therefore be terminated when parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege, 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;
> (C) termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2) (2007). 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 and Mother both challenge the sufficiency of the evidence supporting the trial court's findings pertaining to subsections (B) and (C) of the termination statute set forth above. We shall address each argument in turn.

A. Reasonable Probability Conditions Will Not Be Remedied

Father argues that although the juvenile court's findings are "thoughtful[,]" the findings pertaining to his use of alcohol are not supported by the evidence, and the remaining findings concerning his "dirty house" and "personal hygiene" are insufficient to justify the termination of his parental rights. Appellant Father's Br. p. 8. Mother, on the other hand, claims the MCDCS failed to establish that there is a reasonable probability the conditions leading to S.S.'s formal removal from her care will not be remedied because the MCDCS failed to provide her with "any services" or to "monitor any progress" she had made throughout the duration of the underlying proceedings. Appellant Mother's Br. p. 12. Thus, Mother contends there is a fatal "lack of empirical data" to support the juvenile court's judgment. *Id.* at 10.

We pause to observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A juvenile court must therefore find only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. *See L.S.*, 717 N.E.2d at 209. Here, the court determined that the MCDCS presented sufficient evidence to satisfy both requirements of subsection (B) – that is to say, that the MCDCS established that there is a reasonable probability the conditions resulting in S.S.'s removal from both Father's and Mother's care will not be remedied and that continuation of both parent-child relationships poses a threat to S.S.'s

well-being. *See* Ind. Code § 31-35-2-4(b)(2)(B)(i) and (ii). We begin our review by considering whether sufficient evidence supports the juvenile court's findings regarding subsection (B)(i) of the termination statute as to each parent.

When determining whether a reasonable probability exists that the conditions justifying a child's removal or continued placement outside the home 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. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. 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*. The juvenile court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county Department of Child Services (here, the MCDCS) is not required to provide evidence ruling 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).

Father

In determining that there is a reasonable probability the conditions resulting in S.S.'s removal and continued placement outside of Father's care will not be remedied, the juvenile court made the following pertinent findings:

> 21. During the [substance abuse] assessment, [Father] reported that . . . prior to July of 2007, he had been drinking daily, and that on average he drinks 30 beers a day.
>
> * * * *
>
> 23. [Father] was referred to an . . . IOP because of his substance abuse issues. He failed to complete those referrals and was therefore referred to a 14 day in-patient program at the Salvation Army. He completed the 14 day in-patient program and was re-referred to IOP.
> 24. In spite of these referrals, [Father] has never demonstrated the sustained ability to abstain from alcohol use.
> 25. While the CHINS case was pending, service providers observed [Father] with a beer near him or with friends who were drinking beer. [Father] was also observed to smell of alcohol, his hygiene was poor, he was unkempt and disheveled in appearance and wearing dirty clothes.
>
> * * * *
>
> 27. Home-based counseling, wrap-around services through the DAWN Project, and a parent mentor were referred for [Father]. Both the home-based counselor and the parent mentor closed their services unsuccessfully.
> 28. At Dawn team meetings, some of which [Father] failed to attend, [Father] always had the same dirty clothes on, smelled of alcohol, was typically disheveled and disoriented[,] and at times was bleeding from the arms.
> 29. The concerns regarding [Father] during DAWN team meetings were that he complete substance abuse treatment, maintain sobriety[,] and show he could care for [S.S.] and the home.
> 30. DAWN employees dropped in on [Father] in his home. On July 2, 2007[,] [Father] was observed on his front porch with a beer in his hand. On July 5, 2007, [Father] had people in his house and [Father] had beer. On July 8, 2007, [Father] was not drinking but his trash can was filled with beer cans. In April of 2008, [Father] smelled of alcohol on at least two occasions.
> 31. The parenting mentor observed [Father's] hygiene to be very poor; his hair was oily and uncombed, and he smelled like body odor. The home "smelled like cat urine," there was a lot of clutter and food on the floor.

> 32. At times the parenting mentor felt [Father] appeared intoxicated. His words were slurred.
>
> * * * *
>
> 34. In spite of the services of a parenting mentor, [Father] never made any progress regarding hygiene. He never changed his clothes[,] and there was no progress made on the cleanliness of the house.
> 35. [Father] failed to visit [S.S.] on a consistent basis.
> 36. There is a reasonable probability that the conditions that resulted in [S.S.'s] removal or the reasons for placement outside the home of [Father] will not be remedied. [Father] has failed to complete services and has failed to address his alcohol problem. [Father] does not acknowledge that he has an alcohol problem. The same personal hygiene and home cleanliness issues exist that existed at the time of [S.S.'s] removal. Given [Father's] failure to participate in services, it is unlikely that these circumstances will change.

Appellant Father's App. pp. 13-16. The evidence most favorable to the judgment supports these findings, which in turn support the juvenile court's ultimate decision to terminate Father's parental rights to S.S.

Case manager Reed testified that when she first observed the family home in December 2006, she could smell cigarette smoke as she "walked up to the porch before even opening the door[,]" observed a "port-o-pot" in the living room, and saw a spittoon, which was "pretty full" and made from a Tide bottle, sitting next to Father. Tr. p. 44. Reed further testified that when she visited Father in his home during the CHINS case, it was "[p]retty much the same conditions from when I removed [S.S.][,] except the port-o-potty had been removed [to] . . . the bedroom." *Id.* at 60. Reed also informed the court that "throughout the case[,] [Father] became less and less kept physically" and that his "hygiene became worse[.]" *Id.* at 61. Specifically, she stated that Father's hair was "almost never combed[]" and "very, very greasy and oily," that he had a "very strong

odor of perspiration and overall body odor, along with a smell of alcohol that kind of just seemed to linger." *Id.*

With regard to Father's alcohol consumption, Reed informed the court that despite an agreement made during the child and family team meetings with Father that there would be no alcohol in the home, she had personally observed beer in Father's refrigerator during one of her home visits. Reed also testified that Father had been informed during every team meeting that if he continued to drink or to allow alcohol to be in his home, that S.S. would not be reunified with him. When questioned as to Father's response to these warnings, Reed replied that Father had indicated he "understood[,]" but that he nevertheless "always denied drinking or even having a drinking problem." *Id.* at 62.

Finally, when questioned why the MCDCS determined in March 2008 that reunification with Father was not feasible and changed its permanency recommendation from reunification to adoption, Reed explained it was because Father "hadn't completed services or been compliant with services. He'd still been denying that he had a drinking problem" and his "mental capacity was not well enough to raise a child. . . ." *Id.* at 64-65.

Testimony from all the services providers involved in Father's case echoed that of Reed's. For example, DAWN Project Care Coordinator Michelle Hudgins testified that the principal goals she established with Father were for Father to achieve sobriety, complete substance abuse services, maintain the house, and demonstrate that he was capable of caring for S.S's medical and educational needs. She further informed the

court that Father was "never fully engaged" at the DAWN Project team meetings, that he would typically appear "disheveled[,]" "disoriented[,]" "always very dirty" and "oily[,]" and that he typically "smelled of alcohol. *Id.* at 103. Hudgins had also observed Father drinking beer on two separate occasions and had, at other times, seen him with beer in his hands or at the house. Hudgins later stated that the DAWN Project team supported adoption because S.S. was thriving in his current home and Father had made "no progress on his goals." *Id.* at 113.

Vickie Loyd, parent mentor with Families Reaching for Rainbows, testified that on her first visit to the house, she observed a case of beer by Father's chair. She further stated that Fathers clothes were "very dirty and grey[,]" his hair was "very oily" and "uncombed[,]" and he had body odor that smelled "like a homeless person." *Id.* at 132-33. There was "dried[-]up food" on the floor, clutter in the bedroom, and the "floor looked like it had never been mopped." *Id.* When asked whether Father made any progress during the time that she worked with him, Loyd answered in the negative, explaining that Father continued to deny he had a drinking problem, and his dirty clothes, personal hygiene, and body odor never improved. Loyd further stated, "It got to a point that the smell of the house and the smell of [Father] was just too overwhelming. The urine smell . . . I would choke." *Id.* at 140.

Terrence Lovejoy, licensed social worker and certified forensic addictions examiner, testified that he had conducted the parenting and alcohol assessment of Father. Lovejoy informed the court that during the assessment, Father stated he had been given alcohol for the first time at the age of five by his father and other family members and

that by the age of ten, he was drinking alcohol twice a week after school. Father further admitted to Lovejoy that by December 2006, he was drinking "up to thirty beers a day." *Id.* at 195. When questioned about his overall assessment of Father, Lovejoy stated that, based on his education, training, experience, and assessment of Father, his "diagnostic impression" was that Father met the criteria for "alcohol dependence[,]" a condition where the person "has [a] full blown addiction to a substance." *Id.* at 198.

Finally, Emily Short, social worker in Dockside's Therapeutic Foster Care Program, supervised visits between S.S. and his parents. Short testified that Father attended only twenty-three of the thirty-three scheduled visits with S.S., that he had come to the visits smelling of alcohol on five separate occasions, and that he had fallen asleep during seven separate visits. Short also indicated that Father had exhibited poor personal hygiene, oftentimes going for long periods of time without bathing, shaving, or getting his hair cut.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In addition, 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. *Id.* Here, at the time of the termination hearing, Father had failed to successfully accomplish a majority of the juvenile court's dispositional goals and remained unable to provide S.S. with a safe, clean, and nurturing home environment.

Specifically, Father had failed to successfully complete an IOP, to demonstrate that he could abstain from the use of alcohol, to consistently visit with S.S., to rectify the filthy conditions of his home, and to improve his own personal hygiene.

Based on the foregoing, we conclude that the juvenile court's findings are supported by ample evidence demonstrating Father's habitual pattern of conduct in failing to acknowledge and address his addiction to alcohol and in failing to provide a consistently safe, clean, and nurturing home environment for S.S. Father's arguments on appeal, including his assertions that there is insufficient evidence supporting the juvenile court's findings regarding his use of alcohol because there is "no suggestion that [Father] was ever arrested as a result of his substance abuse[,]" and because the "only evidence that [Father] was tested for alcohol" was in June 2007, amount to an invitation to reweigh the evidence, and this we may not do. Appellant Father's Br. pp. 13-14; s*ee D.D.*, 804 N.E.2d at 264 (concluding that appellate court cannot reweigh evidence or judge credibility of witnesses and that mother's pattern of conduct during underlying CHINS and termination proceedings supported juvenile court's determination that conditions resulting in removal of child will likely continue).

Mother

In determining that there is a reasonable probability the conditions resulting in S.S.'s removal and continued placement outside of Mother's care will also not be remedied, the juvenile court made several additional relevant findings, including:

> 8. [S.S.] was removed from the temporary in-home trial visit with [Father] . . . on May 1, 2007. . . . [Mother] was not part of the

reunification plan because she was living in a group home indefinitely and unable to care for [S.S.].

* * * *

11. [Mother] has continued to reside in the Julian Group Home since the filing of the CHINS petition. The Julian Group Home is a community mental health group home through Gallahue Mental Health.
12. [Mother] is diagnosed with [S]chizophrenia, and receives mental health services, including medications and support through the Julian Group Home . . . .

** * *

14. [Mother] is not able to have a child live with her in the Julian Group Home.
15. [Mother] is hopeful that one day she can live at Hawthorne Manor [A]partments[,] which are apartments run and overseen by Gallahue Mental Health. She thinks she would be able to see [S.S.] more that way. [Mother] is working on being more independent so that at some point in time she might be able to take care of [S.S.]. By her own admission, [Mother] "cannot control him now" but in 3 or 4 years, when he is a teen, she might be able to.

* * * *

17. By her own admission, [Mother] does not believe that she can care for [S.S.] at the present time or in the near future. She is afraid that she will "go loopy and kill him." [Mother] wants [S.S.] to stay in his current placement.
18. Because of her medications, [Mother] has difficulty staying awake; her routine in the group home is often to go right back to bed after group meetings. She has missed some group meetings because she is asleep.
19. [Mother] was provided the opportunity to visit [S.S.] in a supervised setting. When she visited him, the visits went well and [S.S.] enjoyed seeing her. [Mother] missed several visits each month; visits were reduced to once a month for this reason.
20. There is a reasonable probability that the conditions that resulted in [S.S.'s] removal or the reasons for placement outside the home of [Mother] will not be remedied. When the CHINS petition was filed, [Mother] was in a group home where she could not care for [S.S.]. She is still in that same group home and she is unable to care for [S.S.]. [Mother], herself, does not think she can take care of [S.S.]. She loves him very much and wants to visit with him[,] but she acknowledges that she cannot be responsible for him.

Appellant Mother's App. p. 13-14. These findings, too, are supported by clear and convincing evidence.

It is undisputed that Mother lived at the Julian Group Home for the duration of the underlying proceedings, but for a brief attempt at independent living which ended unsuccessfully after only a few months when she returned to the Julian Group Home. In addition, Mother freely admitted during the termination hearing that she was incapable of caring for S.S. at the present time and that she would remain so for several years due to her unresolved mental health issues. When asked why she believed she was incapable of caring for S.S., Mother explained, "Because I am afraid something bad is going happen to him[,] or if I go loopy on him, I'd kill him." Tr. at 25. When questioned as to whether she had "any idea" when she might be able to care for S.S., Mother said, "I can't control him now[,] but maybe in three (3) or four (4) years when he's a teen . . . ." *Id.* at 40.

Mother also failed to successfully complete a majority of the court-ordered dispositional goals set forth in the Agreed Entry. Among others, Mother failed to secure employment, to obtain suitable housing for herself and S.S., and to successfully complete home-based services. Also significant, Mother failed to consistently exercise her right to visit with S.S. throughout the duration of the CHINS case, attending only twenty-two of the thirty-three scheduled visits. Visitation supervisor Short testified that during visits, there were "very little interactions between the parents and [S.S.]" aside from discussions concerning whatever game they were playing. *Id.* at 183. Short further stated that in March 2008, she recommended that Mother's weekly visits be decreased to every other week, and in August 2008, Short recommended only one visit per month primarily due to

Mother's sporadic attendance. Finally, Short informed the juvenile court that Mother failed to appear for her last scheduled visit with S.S. prior to the termination hearing.

During the termination hearing, case Manager Reed was asked whether the MCDCS had ever considered Mother a "viable option" for reunification, Reed replied, "No[,]" and went on to explain:

> We had been told when we first removed [S.S] that . . . [Father] had sole custody of [S.S.]. And, that [Father] had sole custody of [S.S.] because . . . there had been issues with [Mother's] mental illness . . . in the past and, since she had been living in the Julian Group Home that she was unable to take a child there anyway. And, [Mother] never indicated to us that she wanted [S.S.] placed with her.

Id. at 52. When further pressed as to why it was "never [MCDCS's] intention to try to reunify [S.S.] with his Mother[,]" Reed replied, "I don't know if intention . . . is the right statement. It was never foreseen as an option. [Mother] never, never, once indicated that she wanted [S.S.] placed with her. . . ." *Id.* at 79. Reed further explained that the MCDCS had never received any reports from Mother's doctors or therapists regarding Mother's medical "diagnos[i]s[,]" "progress" in treatment, or "competen[cy]" *Id.* at 77-78. Finally, Reed testified that Mother never requested that the MCDCS provide referrals for additional services or that the juvenile court order additional services so that she could be reunified with S.S. Likewise, MCDCS case manager David Stedman testified that Mother had told him she was not capable of taking care of S.S., and Short confirmed that Mother had never expressed an interest in having S.S. placed with her during any of the DAWN Project team meetings she attended.

Based on the foregoing, we find Mother's argument that there is a lack of empirical evidence proving that there is a reasonable probability the conditions leading to S.S.'s removal from her care will not be remedied because she was "never considered an option as a caregiver and no significant record was developed in that regard" unpersuasive. Appellant Mother's Br. p. 6. This Court has previously explained that "the provision of family services is not a requisite element of [Indiana's] parental rights termination statute, and thus, even a complete failure to provide services would not serve to negate a necessary element of the termination statute and require reversal." *In re E.E.*, 736 N.E.2d 791, 796 (Ind. Ct. App. 2000). Although not required to do so, the record reveals that the MCDCS did in fact provide appropriate services to Mother under the circumstances, including supervised visits with S.S. and Dawn Project team meetings, while she also received mental health care, medication, and support through Gallahue Mental Health. Although testimony from caseworkers indicates Mother was never considered by the MCDCS to be a viable option for reunification, clear and convincing evidence supports the juvenile court's findings regarding Mother's continuing inability to care for S.S. throughout the duration of the CHINS case due to her unresolved mental health issues, her inability to live independently and to provide S.S. with a safe and stable home, and her failure to successfully complete court-ordered dispositional goals. Thus, the fact that Mother was not considered a viable option for placement was not unreasonable under these circumstances.

In sum, we reiterate that a 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 the

parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the child. *D.D.*, 804 N.E.2d at 266. Given Father's unfortunate reoccurring behavior, as well as Mother's lengthy struggle with a debilitating mental illness and unknown prognosis as to whether she will ever be capable of managing her illness and living independently in the future, we cannot conclude that the trial court committed reversible error in deciding that there is a reasonable probability the conditions resulting in S.S.'s removal from both Father's and Mother's care will not be remedied.[3]

B. Best Interests

We next consider Father's and Mother's allegations that the MCDCS failed to provide sufficient evidence to establish that termination of their parental rights is in S.S.'s best interests. In making this argument, Father asserts that "any harmful effect [his] drinking has on S.S. was not established at trial." Appellant Father's Br. p. 14. He also claims that although S.S. "suffered low esteem, encopresis and enuresis" when removed from his care, "no nexus was established between these afflictions and either the cleanliness of [Father's] home or [Father's] personal hygiene." *Id.* at 17. Finally, Father suggests that "the improvement of S.S.'s afflictions may have improved simply by providing counseling to S.S. without removing him from his father." *Id.* Mother asserts that the evidence shows "a strong bond and caring relationship between [Mother] and

[3] Having concluded the juvenile court's findings that there is a reasonable probability the conditions resulting in S.S.'s removal from both Father's and Mother's care will not be remedied are supported by sufficient evidence, we need not address the parents' additional arguments regarding the sufficiency of the evidence supporting the juvenile court's determination that continuation of the parent-child relationships pose a threat to S.S.'s well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

S.S. and the ending of that bond cannot be in S.S.'s best interests." Appellant Mother's Br. p. 6

We are mindful that, in determining what is in the best interests of a child, the juvenile court is required to look beyond the factors identified by the Department of Child Services and to consider 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 court must subordinate the interests of the parent to those of the child. *Id.* The juvenile court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in the child's best interests. *Id.*

The juvenile court made several additional pertinent findings, in addition to those set forth previously, in arriving at its decision that termination of Father's and Mother's parental rights is in S.S.'s best interests, including the following:

> 37. [Father] continues to drink alcohol and does not feel he has an alcohol problem. [Father] has failed to demonstrate the ability to take care of his home and himself and, if [S.S.] were reunified with [Father], there is a substantial probability of future neglect.
> 38. When first placed in foster care, [S.S.] was behind in school, had significant problems with his hygiene[,] and had problems with encopresis and enuresis. [S.S.] has been placed with his current foster parents since November of 2007. [S.S.] has received counseling and special education services and has made significant

progress in school, with his hygiene, and with his encopresis and enuresis.

39. Termination of the parental rights of [Mother] and [Father] are in [S.S.'s] best interests. [S.S.] needs permanency and stability in a safe and loving home. [S.S.'s] current foster parents are very involved with his special education needs and transport him to tutoring after school. They have provided him with a loving, suitable, nurturing environment. He is very bonded to his foster family and the foster parents wish to adopt him.

40. The foster parents plan to ensure [S.S.] has some visitation with [Mother] and [Father], if [S.S.] wants contact.

* * * *

42. The Guardian ad Litem is in agreement that termination of the parent-child relationship is in the best interests of the child and that adoption is an appropriate plan for [S.S.]. The Guardian ad Litem also believes contact with [Mother], at [S.S.'s] discretion, would be in his best interests.

Appellant Mother's App. p. 16. Clear and convincing evidence supports these findings.

Mother admitted during the termination hearing that she was unable to care for S.S., and further stated, "I still get my visits once a month . . . and that's fine with me[.] [W]e have a good time and everything like this. But [S.S.'s] getting better treatment by staying with the [foster family] . . . . He loves them like he does me and Dad." Tr. p. 25. When asked whether she felt S.S. should be allowed to live with Father, Mother answered in the negative. Mother, who lived with Father and S.S. prior to living at the Julian Group Home, went on to explain that Father "drinks too much" and "has a bad temper when he is drunk." *Id.* at 25, 27. In addition, Mother informed the court that when Father drinks alcohol he is "mean" to S.S. and "beats on [S.S.]" *Id.* at 26-27. For all these reasons, Mother felt S.S. was "better off where he's at" in foster care. *Id.* at 27.

When asked how S.S. responded after his visits with Mother were reduced to two times a month, and then later to once a month, social worker and visitation supervisor

Short stated, "He has been doing fine. There has been no visible chan[g]e in him." *Id.* at 185. Although acknowledging that they love each other, Short described S.S.'s relationship with his parents as "inappropriate," stating there is a lot of "parent/child" role reversal, and that S.S. was "overly concerned with caring for his parents[.]" *Id.* at 186. Short further explained that this type of role reversal was not appropriate for S.S.'s development and that he needed to feel "secure and taken care of so that he's free to develop emotionally, socially, [and] academically . . . ." *Id.* Finally, Short testified that prior to being placed with Dockside Services in November 2007, doctors had ruled out a medical cause for S.S.'s enuresis and encopresis, but stated that such conditions can also be caused by trauma or a stressful event. When asked whether she had observed any changes in S.S.'s enuresis and encopresis, Short replied, "Yes, it's significantly decreased since he's been stable in the foster home and also with therapy." *Id.* at 187.

In recommending termination of both Father's and Mother's parental rights, case manager Reed stated S.S. had "done a complete 360" in his current foster placement. *Id.* at 63. Reed further explained:

> [S.S.'s] overall personal hygiene has improved a (sic) 100 percent. He's improved in school[.] [H]e's made the honor roll[.] [H]e's not as embarrassed[.] [H]e doesn't hide his face with his hair like he used to. He seems very bonded with his current foster placement, calls them Mom and Dad. He's doing really well in therapy[.] He seems to just be doing excellent.

Id. at 63-64. Similarly DAWN Project care coordinator Hudgins testified that from the time of S.S.'s second removal from Father in May 2007 until September 2008, S.S.'s reading and math skills had progressed from a kindergarten level to a second grade level.

When asked whether the DAWN Project team agreed with the MCDCS's determination that adoption is the most appropriate permanency plan for S.S., Hudgins answered in the affirmative and said that when she had last visited with S.S., he was "thriving in his current home and had made significant progress. The [foster] family. . . is a very appropriate family for him, and [Father] ha[s] made no progress on his goals." *Id.* at 113.

MCDCS case manager Steadman also testified that he believed termination of both parents' parental rights to S.S. was in S.S.'s best interests due to Mothers "inability to care for [S.S.] in her present situation" and because of the "lack of cooperation and willingness to . . . provide a home for [S.S.] by [Father]." *Id.* at 167. Steadman went on to state that S.S.'s social interactions at school had "changed drastically" since he was placed in his current foster home and that S.S. was "very, very well connected with the [foster] family." *Id.* at 167-68. Although Steadman did believe that an attachment between S.S. and Mother still existed, he nevertheless felt that keeping S.S. in long-term foster care so that Mother could continue to have court-ordered supervised visits with him "would not be appropriate for [S.S.]." *Id.* at 168. Steadman further explained that:

> [S.S.] wouldn't have the ability to move with the family, if they needed to. . . . [T]here's always a sense of where am I going to go next when you're in foster care, where with an adoption he knows that he is going to be there forever, this is going to be his forever family. So it's [a] much more stable environment for him emotionally.

Id. Finally, the record reveals that the Guardian Ad Litem ("GAL") was "very happy" with the MCDCS's plan of adoption and felt that placement with the current foster family was in S.S.'s best interests. *Id.* at 203.

Based on the totality of the evidence, we conclude that clear and convincing evidence supports the juvenile court's determination that termination of both parents' parental rights is in S.S.'s best interests. Contrary to Father's arguments on appeal, the testimony cited above by Mother, caseworkers, various services providers, and the GAL clearly establishes a sufficient factual basis for the juvenile court to reasonably infer that Father's unresolved addiction to alcohol and refusal to maintain a safe and clean home environment had caused a serious and harmful effect on S.S.'s physical, mental, and social development. In addition, although we acknowledge that Mother loves her son and has established a positive friendship relationship with S.S., by her own admission, Mother's unresolved mental illness prevents her from being able to successfully achieve dispositional goals and to provide S.S. with the safe and stable home environment he needs to be healthy. We therefore find no error. *See, e.g.*, *In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*; *see also In re R.G.*, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995) (stating although mental disability alone is not proper basis for termination of parental rights, where parents are unwilling or unable to fulfill their legal obligations in caring for their child, mental illness may be considered).

III. Conclusion

A thorough review of the record leaves this Court convinced that the juvenile court's judgment terminating Father's and Mother's parental rights to S.S. is supported

by clear and convincing evidence. Since the time of S.S.'s removal, both parents have failed to make any significant improvement in their respective ability to care for their son. It is unfair to ask S.S. to continue to wait until Father and/or Mother are willing and able to obtain, and benefit from, the help that they each need. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). We will reverse a termination of parental rights "'only upon a showing of "clear error"– that which leaves us with a definite and firm conviction that a mistake has been made.'" *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly*, 592 N.E.2d at 1235). We find no such error here.

The judgment of the juvenile court is hereby affirmed.

CRONE, J., and BROWN, J., concur.