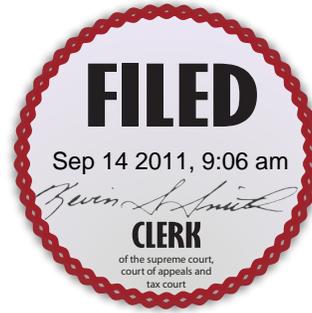


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT-CHILD RELATIONSHIP )  
OF A.R. (MINOR CHILD), and )  
 )  
S.S. (FATHER), )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
THE INDIANA DEPARTMENT OF )  
CHILD SERVICES, )  
 )  
Appellee-Petitioner. )

No. 48A02-1102-JT-99

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable G. George Pancol, Judge  
The Honorable Larry VanBriggle, Commissioner Pro Tempore  
Cause No. 48D02-1002-JT-62

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**September 14, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

**Case Summary**

S.S. (“Father”) appeals an order terminating his parental rights to A.R., upon the petition of the Madison County Department of Child Services (“DCS”). We affirm.

**Issues**

Father presents two issues for our review:

- I. Whether his due process rights were violated by the timing and sequence of DCS’s petition for termination of his parental rights; and
- II. Whether DCS established, by clear and convincing evidence, the requisite statutory elements to support termination of his parental rights.

**Facts and Procedural History**

A.R. was born on June 14, 2007. A.R.’s mother (“Mother”) admitted use of cocaine, marijuana, and alcohol during her pregnancy, and tested positive for cocaine use upon admission to the hospital at which A.R. was born. On June 27, 2007, DCS alleged A.R. to be a Child in Need of Services (“CHINS”) and removed A.R. from Mother to a foster home. On August 30, 2007, the juvenile court found A.R. to be a CHINS and entered a dispositional decree requiring Mother to participate in counseling and other services in order to be reunified with A.R. At this time, no paternity had been established.

From the time of A.R.’s birth, Mother had been living with Father. In November 6, 2008, Father admitted to being A.R.’s father. The juvenile court therefore ordered Father to

pay \$43.00 per week in child support for A.R. and to participate in DCS-coordinated services, including a substance abuse assessment and counseling. Father's paternity of A.R. was formally established on January 16, 2009.

On December 4, 2009, DCS filed a motion with the juvenile court seeking to amend the dispositional decree and add Father to the CHINS action.

On January 6, 2010, the trial court granted DCS's request for an amended dispositional decree, formally adding Father to the CHINS case and ordering Father to participate in substance abuse and parenting evaluations and to obtain regular employment. Father participated in supervised visits with A.R., attended one doctor's appointment for A.R., and purchased some clothing and one or two birthday presents for A.R. Father did not, however, attend a substance abuse evaluation until April 2010, and admitted to Amanda Capes ("Capes"), a case manager for DCS, that he used marijuana and alcohol on occasion. Though he acknowledged that Mother had substantial drug abuse problems and that the apartment he shared with Mother was not a suitable place for a small child, Father nevertheless did not relocate, even though Capes told him that reunification with A.R. would require Father to find a new home. Father further failed to obtain regular employment or pay court-ordered child support and has not attended any of A.R.'s behavioral therapy sessions.

On February 4, 2010, DCS filed a petition to terminate the parental rights of both Mother and Father, with the intent to place A.R. with L.N., Father's sister. L.N. did not form any significant bond with A.R., who has significant health and behavioral special needs. In May 2010, A.R.'s foster family, which had cared for A.R. since she was ten days old,

expressed its desire to adopt her.

On July 13, 2010, a hearing was conducted on the petition to terminate Mother's and Father's parental rights. The hearing was continued to and concluded on August 3, 2010. On January 13, 2011, the juvenile court ordered Mother's and Father's parental rights terminated.

This appeal followed.

### **Discussion and Decision**

#### Whether Father was Deprived of Due Process

Father's first challenge focuses on the timing of the trial court's entry of the amended dispositional decree and the termination of his parental rights to A.R. Specifically, Father contends that he was deprived of due process because the amended dispositional decree formally adding Father to the CHINS case was entered in January 2010 at "the eleventh hour" (Appellant's Br. at 14), thus making impossible any attempt by Father, whose paternity was established on January 16, 2009, to obtain reunification with A.R.

This court has previously addressed due process challenges to CHINS proceedings and the termination of parental rights.

The Due Process Clause of the United States Constitution "prohibits state action that deprives a person of life, liberty, or property without a fair proceeding." In re B.J., 879 N.E.2d 7, 16 (Ind. Ct. App. 2008), trans. denied. It is also well settled that the right to raise one's child is an "essential, basic right that is more precious than property rights." In re C.C., 788 N.E.2d 847, 852 (Ind. Ct. App. 2003), trans. denied. Thus, when the State seeks to terminate a parent-child relationship, it must do so in a manner that meets the constitutional requirements of the due process clause. Hite v. Vanderburgh County Office of Family & Children, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006). Although due process has never been precisely defined, the phrase

embodies a requirement of “fundamental fairness.” In re J.T., 740 N.E.2d 1261, 1264 (Ind. Ct. App. 2000), trans. denied.

In re J.S.O., 938 N.E.2d 271, 274 (Ind. Ct. App. 2010).

At its most basic, then, “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” Hite v. Vanderburgh County Office of Family & Children, 845 N.E.2d 175, 181 (Ind. Ct. App. 2006) (quoting Thompson v. Clark County Div. of Family & Children, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003), trans. denied). Thus, we look to three factors in assessing whether an appellant has been deprived of due process in a parental rights case: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing government interest supporting use of the challenged procedure. Id. As in Hite, there is no question that Father’s private interest in his parental rights is substantial. See id.

Thus, we turn to the question of the risk of error involved in the State’s procedure here. Father states that “[h]e was formally added ... just weeks prior to DCS filing to terminate his parental rights.” (Appellant’s Br. at 14.) Yet Father was ordered to engage in DCS services in November 2008 and was found by the juvenile court to be A.R.’s father in January 2009. In late 2009, Father acknowledged to Capes that reunification with A.R. would require him to move out of the apartment he shared with Mother, but he failed to do so. Moreover, when the petition to terminate Father’s parental rights was filed, it was DCS’s plan to place A.R. with a caregiver Father identified—his sister, L.N.—and Father acknowledged that he would be willing to agree to termination of his parental rights if A.R.

were placed with L.N. Thus, though Father was formally added to the CHINS proceeding a few weeks before DCS filed its petition to terminate parental rights, Father had ample opportunity to participate in DCS's reunification efforts before the petition was filed.

Moreover, while DCS filed its petition a few weeks after Father was formally added to the CHINS proceeding, the hearing on DCS's petition occurred on July 13, 2010, and was continued to August 3, 2010, because of the death of one of Father's family members. Yet Father failed to appear on August 3, 2010, to present evidence of his cooperation with DCS and his attempt to seek services to establish a home fit for reunification with A.R.

Under these circumstances, we conclude that the risk of error in DCS's timing of its petition to terminate Father's parental rights was not substantial. Father had ample opportunity to participate in services in advance of both his formal addition as a named party to the CHINS action and the petition for termination of parental rights. This is particularly so where, as here, the countervailing government interest involves finding a permanent home for a child with substantial behavioral and medical problems three years after her birth, during which time she had not resided with either of her birth parents for even one day. Thus, we cannot say that the juvenile court deprived Father of his due process rights during the pendency of its decision on DCS's petition to terminate his parental rights to A.R.

Whether DCS Established the Statutory Requirements for Termination  
of Father's Parental Rights by Clear and Convincing Evidence

Father also contends that DCS failed to establish by clear and convincing evidence the statutory requirements for termination of his parental rights. Our standard of review is highly deferential in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832,

836 (Ind. Ct. App. 2001). This Court will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). When reviewing the sufficiency of the evidence to support a judgment of involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. Id.

Parental rights are of a constitutional dimension, but the law provides for the termination of those rights when the parents are unable or unwilling to meet their parental responsibilities. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). The purpose of terminating parental rights is not to punish the parents, but to protect their children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied.

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

(A) That one (1) of the following is true:

- (i) The child has been removed from the parent for at least six (6) months under a dispositional decree.
- (ii) A court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made.
- (iii) The child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;

(B) That one (1) of the following is true:

- (i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.
- (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
- (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services;

(C) that termination is in the best interests of the child; and

(D) that there is a satisfactory plan for the care and treatment of the child.

If the court finds the allegations in a petition described in Section 4 of this chapter are true, the court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a). A trial 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 trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. 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.

Here, Father addresses only one of the four prongs of Indiana Code Section 31-35-2-4(b)(2)(B), challenging the termination of his rights as to whether there was a reasonable probability that the conditions resulting in A.R.'s removal would not be remedied, I.C. § 31-35-2-4(b)(2)(B)(i), and whether there is a reasonable probability that a continued parent-child

relationship would pose a danger to A.R. I.C. § 31-35-2-4(b)(2)(B)(ii). Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive, and therefore the juvenile court needed to find that only one of the three requirements of subsection (b)(2)(B) had been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find dispositive the question of whether a continued parent-child relationship would pose a danger to A.R., we consider that question alone.

Father argues that the juvenile court's findings and conclusions do not adequately articulate a reason for termination under Section 31-35-2-4(b)(2)(B)(ii). In particular, he draws our attention to finding number sixteen, which states that “[o]n or about November 6, 2008, [Father] was ordered to complete the following services” (Appellant’s App. at 63), which included a parenting assessment and compliance with resulting recommendations, payment of \$43.00 per week in child support, participation in supervised visitation, provision of an appropriate home with furnishings and utilities, obtaining a legal source of income, and inquiry and participation in A.R.’s health care. Father contends that the juvenile court’s order disregards the fact that he was ordered to comply “before he was made a party to this action” and that he could not participate in DCS programs until both his paternity was established and he was made a party to the CHINS action. (Appellant’s Br. at 17.)

Father’s argument disregards, however, the requirement that the court must judge a parent’s fitness at the time of the termination hearing in light of evidence of changed conditions. See J.T., 742 N.E.2d at 512. Capes testified that although Father became a named party to the CHINS case in January 2010, he did not seek the court-ordered substance

abuse or parenting assessments until April 2010. Moreover, Capes and A.R.'s foster mother testified that Father failed to participate in those aspects of the order which did not depend upon court-determined paternity and being named in the CHINS action. Father had been to only one doctor's visit with A.R. and had attended none of A.R.'s behavioral therapy sessions. Though Capes had told Father that he would need to obtain a proper residence separate from Mother and find regular, legal employment if he wanted to be reunified with A.R., Father did neither of these things. Finally, Father failed to pay child support as required by the juvenile court's order of November 6, 2008.

Given Father's failure to comply with court orders and DCS requirements and the continued exposure of A.R. to Mother, whose rights were also terminated, that would result from a continued parent-child relationship between A.R. and Father, we cannot conclude that DCS failed to establish by clear and convincing evidence the existence of the relevant statutory requirements for termination of Father's parental rights.

### **Conclusion**

Father was not deprived of his due process rights when DCS filed its petition for termination of his parental rights a few weeks after Father became a named party to the underlying CHINS action. Nor did DCS fail to establish by clear and convincing evidence the statutory requirements for termination of Father's parental rights to A.R.

Affirmed.

MATHIAS, J., and CRONE, J., concur.