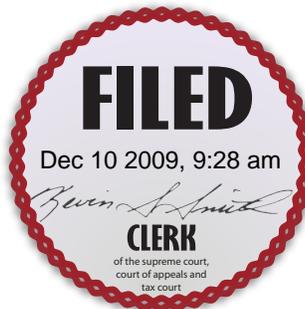


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF:)

I.A.)
_____)

J.H.,)
Appellant-Respondent,)

vs.)

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

No. 62A01-0905-JV-252

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable Lucy Goffinet, Judge
Cause No. 62C01-0802-JT-33

December 10, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

J.H. (“Father”) appeals the juvenile court’s order terminating his parental rights to his child I.A. Father raises one issue on appeal, which we restate as whether the Perry County Department of Child Services (“DCS”) presented sufficient evidence to support the termination of his parental rights to his son I.A.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 18, 2006, D.A. (“Mother”) gave birth to I.A. I.A. is one of Mother’s seven children. Within two months of I.A.’s birth, Mother told Father that I.A. was his child. At all relevant times, Mother and Father did not reside together.

DCS became involved with Mother and her children in February 2006 due to allegations of lack of supervision, educational and medical neglect, and drug use by Mother. Mother agreed to a program of informal adjustment in March 2006. On December 21, 2006, DCS received a report that, unknown to Mother, two of her children were discovered by a police officer playing in the parking lot of a motel unsupervised, while two of her older children had snuck off to a neighboring town alone. After conducting an investigation of the report, DCS removed the children, including I.A., from Mother’s care.

On January 4, 2007, DCS filed a petition alleging that I.A. was a child in need of services (“CHINS”). The CHINS petition alleged that I.A. was Father’s child, even though at that time paternity had not been definitively established. At a hearing held on January 26, 2007, Mother admitted that I.A. was a CHINS. At a review hearing held on March 30, 2007, Father appeared and was identified by the juvenile court as I.A.’s father.

During the hearing, Father admitted that I.A. was a CHINS. Father also appeared at a review hearing conducted on July 12, 2007. At the conclusion of the hearing, the juvenile court ordered Mother, but not Father, to continue to participate in the case plan. Father testified that during the summer of 2007, he had limited visitation with I.A. However, visitation was discontinued in September 2007, apparently because paternity had not been established.

On February 12, 2008, DCS filed a petition to terminate both Mother and Father's parental rights to I.A. On April 15, 2008, Father filed a motion for genetic testing that would establish paternity. The juvenile court granted this motion, and the DNA test results established in June 2008 that I.A. was Father's child. In July 2008, Father was granted visitation with I.A. and agreed to participate in a parent aide program. Initially, Father had visitation with I.A. one day a week, but this was later enlarged to two days a week. Each visitation was supervised by a parent aide. Father did not miss or cancel a single visitation with I.A.

On February 17, 2009, the juvenile court held a final hearing on DCS's petition to terminate Mother and Father's parental rights. Father was present at the hearing, but Mother did not attend. During the hearing, DCS family case manager Kathy Anderson testified that she had been working on this case since April 2008. She stated that I.A. had developmental delays and had been receiving speech, occupational, and physical therapy services from an organization called First Steps. Anderson noted that Father had been participating in parent aide services since July 2008, and despite this, Father "still takes direction from the parent aide, looks at the parent aide for answers at times." *Tr.* at 47.

For instance, Anderson stated that Father “doesn’t always know how to redirect [I.A.], or what [I.A.] may need at that time, so he looks for the parent aide for guidance.” *Id.* at 51. Because of this, Anderson was not comfortable recommending that Father have unsupervised visitation with I.A. Anderson testified that I.A. and Father had not bonded. She noted that there were no displays of affection between them, such as hugging or kissing. She specifically stated, “[I.A.] has not bonded with [Father]. He’s ready to go when it’s time to go. He tells [Father] bye, and he leaves.” *Id.* at 48. Anderson noted that Father did not have a valid driver’s license. She also testified that Father had no plans for the future, specifically noting that Father was unsure about daycare for I.A. while he was at work. Anderson ultimately concluded that continuation of the parent-child relationship posed a threat to I.A.’s well-being.

Leanne Halford testified that she was a parent aide with an organization called Lincoln Hills. She stated that she had supervised each of Father’s visits with I.A. since July 2008. With regard to Father and I.A.’s relationship, Halford indicated that her two principal areas of concern were Father’s lack of parenting skills and the lack of a bond between I.A. and Father. She stated that Father had not made progress in either of these areas. In discussing Father’s parenting skills, Halford stated, “his general parenting skills I feel are not where they should be, due to he does consistently turn to me for cues and reassurance on discipline” *Id.* at 77. Halford spoke at length about the bonding issue noting:

They were real uncomfortable with each other so that’s been our main focus is try to get them to bond as a father and a child should. Still to this day at visits [Father] doesn’t show excitement when [I.A.] arrives. It’s just

kind of take him in, get the coat off, go in, have a snack. [Father] still chooses not to have dinner with [I.A.]. Instead, it's me . . . sitting watching [I.A.] eat, which is kind of not the best circumstance for the child. I have encouraged [Father] to eat with him just because that's a bonding issue as well and interacting at the dinner table.

Id. at 67. Halford continued stating:

[I.A.], still after all this time[,] doesn't refer to [Father] as daddy. It's just I feel like the child, he just knows he goes there, visits for a couple of hours, two times a week. He leaves, and then there's no- like I said, when we arrive there's no hugging or kissing. There's no I miss you, what have you been doing. None of that goes on

Id. at 72. Halford also noted that Father had no plans for daycare and had a suspended driver's license. She concluded that it would not be in I.A.'s best interest to be placed in Father's care.

Father also testified during the hearing. He admitted that his driver's license was suspended. Father testified that he usually leaves for work around four o'clock in the morning. He stated that he did not know if daycare was available that early in the morning. Father indicated that he was considering having a neighbor babysit I.A. while he was at work, but did not know the neighbor's name.

At the conclusion of the hearing, the trial court announced that it was terminating Father and Mother's parental rights to I.A. Thereafter, the trial court issued the following relevant findings and conclusions:

c. There is a reasonable probability that:

(1) The conditions that resulted in the child's removal or the reasons for the placement outside the parent's home will not be remedied in that:

- i. The Father . . . has not bonded with the child after six (6) months of Parent-Aid[e] services.
- ii. The Father . . . needs lots of direction regarding simple tasks relating to the care of the child.

iii. Evidence presented from the Parent-Aid[e] caseworker that there has been no progress in the relationship between the [F]ather and the child in six (6) months of services.

(2) Continuation of the parent-child relationship poses a threat to the well-being of the child The [F]ather . . . has not bonded with the child.

d. Termination is in the best interest of the child in that the child is in a stable environment. The child needs permanency. The original CHINS proceeding was filed in December 2006 and the parents are unwilling or ill-suited to provide for the child's needs. The child is currently in a foster home that is willing to adopt him and three of his siblings. The child is extremely bonded to the foster family and to his siblings.

e. [DCS] has a satisfactory plan for the care and treatment of the child, which is adoption.

Appellant's App. at 10-11. Father now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment of the United States Constitution protects the rights of parents to establish a home and raise their children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental interests may be constitutionally protected, they are not absolute and must be subordinated to the child's interest when determining the proper disposition of a petition to terminate parental rights. *Id.* “[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship.” *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. When the evidence shows that the emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* We will not set aside a trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Castro*, 842 N.E.2d at 372.

Father argues that DCS failed to present sufficient evidence to support the termination of his parental rights as to I.A. In order to effect the termination of a parent-child relationship, DCS must establish the following elements:

(A) that one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding . . . that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

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

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

Ind. Code § 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence. I.C. § 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*.

Father specifically contends that DCS did not prove by clear and convincing evidence that the conditions that resulted in the removal of the child would not be remedied and that the continuation of the parent-child relationship posed a threat to the well-being of the child.¹ Although Father appears to raise both elements of Indiana Code section 31-35-2-4(b)(2)(B) on appeal, because the statute is written in the disjunctive, the trial court need only find either that the conditions causing removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *Castro*, 842 N.E.2d at 373. We therefore focus our review on the first element.

The termination statute provides that DCS “must establish 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.’” *In re A.I.*, 825 N.E.2d at 806 (citing I.C. § 31-35-2-4(b)(2)(B)(i) (emphasis in original)). This language clarifies that it is not just the basis for the initial removal of the child that may be considered for purposes of determining whether a parent’s rights should be terminated, but also those bases resulting in the continued placement outside of the home. *Id.* (citing *In re A.A.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997) (holding that proper inquiry was what

¹ Father does not dispute that the child had been removed from the home for at least six months under a dispositional decree, that termination is in the best interests of the child, or that there is a satisfactory plan for the care and treatment of the child.

conditions led to Office of Family and Children's retention of custody of child and whether there was reasonable probability that those conditions were likely to be remedied)).

In its determination as to whether the conditions will be remedied, the juvenile court must judge a parent's fitness to care for the child at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App 1997). The trial court must also evaluate the parent's habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.*; *In re C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). DCS need not rule out all possibilities of change; rather, DCS need establish only that there is a reasonable probability that the parent's behavior will not change. *In re Kay.L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

Father contends that the trial court's decision to terminate his parental rights was not based on clear and convincing evidence because, it was Mother's behavior and acts of negligence and not his that were the cause of I.A.'s initial removal, that he had attempted in good faith to complete the services to which he had been referred by DCS, and that he had not been given sufficient time to bond with I.A.² Father is essentially asking this court to reweigh the evidence presented at the hearing, which we will not do on review. *See In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998).

² Father also argues that his previous conviction for OWI was not a reason for removal so he was not directed to services for alcohol-related issues and that his financial problems should not have constituted grounds for termination. Neither the failure to complete alcohol-related services nor Father's financial problems were relied on by the court in terminating his parental rights. Therefore, we do not reach these contentions.

Here, the trial court found that Father had not bonded with I.A. after six months of parent aide services, that Father needed a lot of direction “regarding simple tasks relating to the care of [I.A.],” and that evidence was presented that there had been no progress in the relationship between Father and I.A. during six months of services. *Appellant’s App.* at 10. The evidence most favorable to the judgment showed that Father lacked proper parenting skills and that there was not sufficient bonding between Father and I.A. Anderson testified that, although Father had been involved in the parent aide program since July 2008, at the time of the February 2009 hearing, he “still takes direction from the parent aide, looks at the parent aide for answers at times.” *Tr.* at 47. He looked to the parent aide for guidance because he did not know how to redirect I.A. or what the child may need. *Id.* at 51. Halford testified that Father’s general parenting skills were not where they should be because he consistently turned to her for cues and reassurance on discipline. *Id.* at 77.

There was testimony that I.A. and Father had not bonded and there were no displays of affection between the two, such as hugging and kissing. Halford testified that Father and I.A. were uncomfortable around each other, and Father did not show any excitement when I.A. arrived for visits. *Id.* at 67. Additionally, evidence was presented that Father had made no plans as to daycare for I.A. while he worked and that he had a suspended driver’s license. 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.” *In re A.N.J.*, 690 N.E.2d at 722 (*quoting Egly v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such

error here. The trial court did not err in finding that DCS proved that there existed a reasonable probability that the conditions that resulted in the removal of the child would not be remedied and in granting the petition to terminate Father's parental rights.

Affirmed.

NAJAM, J., and BARNES, J., concur.