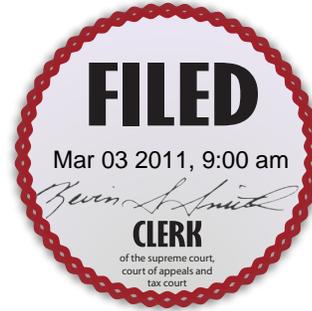


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF A.C.)

J.C.,)
)
Appellant,)

vs.)

No. 79A04-1007-JT-495

TIPPECANOE COUNTY DEPARMENT OF)
CHILD SERVICES,)

Appellee.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta Rush, Judge
Cause No. 79D03-1004-JT-51

March 3, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

J.C. (Father) appeals the involuntary termination of his parental rights to his child, A.C. In so doing, Father challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Father is the biological father of A.C., born in November 2003. The facts most favorable to the trial court's judgment reveal that A.C. was taken into emergency protective custody by the local Tippecanoe County office of the Indiana Department of Child Services (TCDCS) in August 2009 after the child's biological mother, V.D. (Mother), failed to obtain medical treatment for A.C. when part of a lice comb broke off and become lodged in the child's head. This injury occurred when Mother's boyfriend slapped Mother's hand as she was combing A.C.'s hair. The comb remained lodged in A.C.'s scalp for at least one day without any medical treatment for A.C.'s injury.¹ During TCDCS's investigation into the matter, it was also determined that substantial and repeated incidents of domestic violence between Mother and her boyfriend were occurring in the family home and in the presence of A.C. At the time of A.C.'s removal, TCDCS was unable to locate Father.

TCDCS filed a petition alleging A.C. was a child in need of services (CHINS) and, following an evidentiary hearing, the trial court issued an order adjudicating A.C. a CHINS.² Several weeks later, in October 2009, a dispositional hearing was held after which the trial court issued an order formally removing A.C. from Father's care and making A.C. a ward of

¹ The trial court terminated Mother's parental rights to A.C. in its July 2010 judgment. Mother, however, does not participate in this appeal. Consequently, we shall limit our recitation of the facts to those pertinent solely to Father's appeal.

TCDCS. The trial court's dispositional order also directed Father to participate in and successfully complete a variety of services in order to achieve reunification with A.C. These reunification services included a psychological evaluation, case management and family preservation services, and supervised visitation with A.C. In January 2010, additional services were also ordered, including an updated medication evaluation and a mental health safety plan for Father's visits with A.C.

Father's initial participation in court-ordered services was very positive and his visitation privileges with A.C. quickly advanced from fully supervised agency visits to semi-supervised home visits. During this time, however, it was discovered that Father suffered with significant mental health issues that interfered with his ability to provide A.C. with a safe and stable home environment on a full-time basis. Although Father was able to maintain steady employment and housing throughout the majority of the CHINS case, his continuous struggle with severe depression resulted in Father attempting suicide and undergoing four emergency in-patient hospitalizations since the initiation of the underlying proceedings. These periods of instability were oftentimes followed by periods when he was capable of parenting A.C. Father was never able to maintain his mental health stability on more than a short-term basis, however, and oftentimes became overwhelmed with parenting responsibilities. Father also was non-compliant with taking his depression medications on several occasions during the CHINS case, and his progress in services continued to decline rather than improve. As a result, Father's visitation privileges eventually reverted to fully

² Unfortunately, several pertinent documents including the: CHINS petition, CHINS order, dispositional order, parent participation plan, and petition for involuntary termination were not included in the record on

supervised agency visits.

In May 2010, TCDCS filed a petition seeking the involuntary termination of Father's parental rights. An evidentiary hearing on the termination petition was held in June 2010. During the termination hearing, Father admitted he was not yet capable of caring for A.C. on his own. He also confirmed that he was currently unemployed, living with his girlfriend, and unsure if he would be able to afford to refill his depression medications the following month. At the conclusion of the termination hearing, the trial court took the matter under advisement. On July 9, 2010, the trial court entered its judgment terminating Father's parental rights to A.C. This appeal ensued.

We begin our review by acknowledging 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 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to 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 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made specific findings in its order terminating Father's parental rights. Where the court enters specific findings and conclusions thereon, we apply a two-

appeal thereby frustrating this court's review.

tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). 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. *Id.* We will reverse a judgment as clearly erroneous only if, after reviewing the record, we have a “firm conviction that a mistake has been made.” *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d 366, 371 (Ind. Ct. App. 2007), *trans. denied*. We note, however, that TCDCS did not timely file an appellee’s brief.³ In such a situation, we do not undertake the burden of developing arguments for the appellee. *Burrell v. Lewis*, 743 N.E.2d 1207, 1209 (Ind. Ct. App. 2001). Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish prima facie error. *Id.* Prima facie, in this context, is defined as “at first sight, on first appearance, or on the face of it.” *Id.* Where an appellant is unable to meet that burden, we will affirm. *Id.*

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*. Although parental rights are of a

³ TCDCS’s appellee’s brief was due on or before December 13, 2010. TCDCS filed a Motion to File Belated Brief on February 1, 2011. TCDCS’s Motion to File Belated Brief was denied by this court on February 23, 2011. *See* Ind. Appellate R. 35(C) (stating in relevant part, “no motions for extensions of time shall be granted . . . in appeals involving termination of parental rights.”).

constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832.

To terminate a parent-child relationship, the State is required to allege and prove, among other things:

- (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

Ind. Code Ann. § 31-35-2-4(b)(2)(B) (West, Westlaw through 2010 2nd Regular Sess.). The State’s burden of proof for establishing these allegations in termination cases “is one of ‘clear and convincing evidence.’” *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through 2010 2nd Regular Sess.)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. I.C. § 31-35-2-8 (West, Westlaw through 2010 2nd Regular Sess.). Father challenges the sufficiency of the evidence supporting the trial court’s findings as to subsection 2(B) of the termination statute cited above. *See* I.C. § 31-

35-2-4(b)(2)(B).

Initially, we observe that the trial court found TCDCS presented sufficient evidence to satisfy subsections 2(B) (i) and (ii) of I.C. § 31-35-2-4(b)(2)(B). This statute, however, requires TCDCS to establish only one of the requirements of subsection 2(B) by clear and convincing evidence. Because we find it dispositive under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the trial court's findings regarding I.C. § 31-35-2-4(b)(2)(B)(i).

In determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will be remedied, 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 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). 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 Cnty. Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. The trial 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, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her

physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

In finding that there is a reasonable probability the conditions resulting in A.C.'s removal and continued placement outside of Father's care will not be remedied, the trial court made extensive findings regarding Father's "significant mental health issues" which "preclude him from being able to care for A.C. on a full-time basis" and which resulted in Father attempting suicide and having four emergency hospitalizations since A.C. was first placed in foster care. *Appellant's Appendix* at 278. The trial court also found Father was oftentimes "non-compliant with his mental health treatment and is not able to obtain his necessary medication on a regular sustained basis." *Id.* In addition, the court found Father was "easily overwhelmed with caring for A.C." and "continues to have significant periods of instability and an inability to manage his severe depression, hopelessness, and suicidal actions. *Id.*

Regarding visitation with A.C., the trial court acknowledged that Father's visits with A.C. "for the most part . . . would go well." *Id.* However, the court also found that in June 2010, Father "became explosive" during a visit and had "yelled at A.C., used the word "f[---] with her several times" and stated he did not want to see the visit supervisor or A.C. again. *Id.* In addition, the court noted that Father was currently unemployed, living with his girlfriend, and involved in a relationship described by service providers as "negative and unhealthy." *Id.* at 279. Moreover, the court found that "since March 2010[,] Father's progress in services has declined and conflict with service providers has increased." *Id.* These findings are supported by clear and convincing evidence.

Multiple caseworkers and service providers confirmed during the termination hearing that Father continued to struggle with severe depression, became overwhelmed whenever his parenting responsibilities were increased, and remained incapable of demonstrating an ability to provide A.C. with a consistently safe and stable home environment. Angela Heinzman, mental health therapist with Wabash Valley Outpatient Services, informed the trial court that she had participated in approximately twenty-five individual therapy sessions with Father since August 2009, helping Father to work on issues such as “coping with emotions . . . such as anger, frustration, depression, anxiety, paranoia,” as well as with the “stress of the [TCDCS] involvement” in his life, and the “adjustment of losing his daughter.” *Transcript* at 43. When asked if Father’s participation in counseling had improved his “everyday abilities,” Heinzman indicated that there were days Father was “very able to cope with things and use some of the [techniques] we had discussed . . . to manage his frustrations and anxiety,” but that there were other times Father was “unable to cope at all with any sort of stress or problems.” *Id.* at 44. Heinzman also confirmed Father had been admitted to emergency in-patient treatment on four occasions since A.C.’s removal and that Father was “very easily triggered” into distress and crisis by such things as conflict with his girlfriend, changes in the CHINS case, and even increased parenting time with A.C. *Id.* at 44-45.

When asked whether Father’s mental health issues could negatively affect parenting a child, Heinzman answered:

[Father] . . . goes through periods of time when he is very resilient and he can manage his own needs[,] maintain work[,] maintain housing, maintain finances; however, . . . throughout approximately twenty-five years[,] based on our records with Wabash Valley[,] there have been periods of time when [Father’s] been unable to do so [H]e has been in and out both inpatient

and outpatient treatment, so that indicates to me that there may be a problem in the long[-]term with maintaining stability, [and] being able to cope with problems that would come up in the long[-]term

Id. at 47. Heinzman further explained that when Father is having one of his crises, he cannot perform everyday functions for himself, much less a child, stating Father is “not able to conceptually understand any rational conversation.” *Id.* at 51. When asked to describe any changes she had observed in Father’s mental health from the time she first began working with Father to the present day, Heinzman testified that initially Father “maintained very well,” and was able to cope with stress, maintain housing and employment, and manage his emotions, but by early 2010, Father began exhibiting a “decrease in functioning” and his mental health issues became “more severe.” *Id.*

Similarly, Families United Visitation Supervisor Mark Woodcock confirmed that although Father’s visits with A.C. were normally “very affectionate,” Father quickly became “overwhelmed” when Woodcock attempted to increase Father’s visiting time with A.C. *Id.* at 103. Woodcock also detailed his observations during a recent “negative visit” that had occurred just days before the termination hearing during which Father “became quite explosive with his temper” when A.C. mentioned the possibility of being adopted and began “yelling” at A.C. and using “the F word” repeatedly while A.C. lay sobbing on the floor. *Id.* at 103-06. Woodcock further reported that although Father initially had made “quite a bit of progress” in services by learning and applying the parenting education he was receiving, that progress stopped when Father became involved with his current girlfriend who “feeds [Father] a lot of negativity,” “constantly talks about [A.C.] [as] being a bad girl,” and creates “a lot of doubts and fears about [Father’s] ability to parent A.C.” *Id.* at 115. TCDCS case

manager Tabitha Whitlark likewise testified that she believed Father's stability and mental health situation had "gotten worse" as of the time of the termination hearing, and when asked to describe what issues "remain present for the family today," Whitlark answered, "All of them." *Id.* at 158, 162.

As previously explained, a 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 the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *In re D.D.*, 804 N.E.2d 258. Where there are only temporary improvements and the parent's pattern of conduct shows no overall progress, the court might reasonably infer that, under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). Since the time of A.C.'s removal, Father has been unable to achieve a stable home environment for any significant period of time. Moreover, by the time of the termination hearing, Father had failed to successfully complete a majority of the trial court's dispositional goals. Although at times Father appeared to be making some progress in services, he nevertheless was unable to demonstrate an ability to sustain that progress and to consistently provide A.C. with a safe and stable home environment. Consequently, the conditions that resulted in A.C.'s removal and continued placement outside of Father's care have remained largely unchanged.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke Cnty. Office of Family & Children*, 861 N.E.2d at 372. Based on the foregoing, we conclude that

clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions leading to A.C.'s removal or continued placement outside Father's care will not be remedied. Father's arguments on appeal amount to an invitation to reweigh the evidence, which we may not do. *In re D.D.*, 804 N.E.2d 258. Moreover, contrary to Father's assertion on appeal, a thorough review of the record reveals that the trial court did not improperly base its decision to terminate Father's parental rights upon the mere fact that Father suffers with depression. Rather, the court properly considered Father's mental health issues as they affected his ability to parent A.C. and provide her with a safe and stable home environment. *See, e.g., In re R.G. v. Marion Cnty. Office, Dep't of Family & Children*, 647 N.E.2d 326 (Ind. Ct. App. 1995) (determining that a trial court may properly consider a parent's mental disability where that disability renders the parent incapable of fulfilling their legal obligations in caring for the child; this is true not only where the child is in immediate danger of losing his or her life, but also where the child's emotional and physical development is threatened), *trans. denied*. We therefore find no error.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.