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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF J.F., D.K., D.E., AND L.F., )  
MINOR CHILDREN, AND THEIR MOTHER )  
CRYSTAL BASKINS AND THE FATHER OF )  
L.F., AND J.F., JAMES FORD, JR., )  
\_\_\_\_\_)  
IN RE THE MATTER OF THE INVOLUNTARY )

TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF J.F., III, MINOR CHILD )  
AND HIS MOTHER STEPHANIE FORD, )  
\_\_\_\_\_ )

IN RE THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF J.F., AND L.F., MINOR )  
CHILDREN AND THEIR FATHER JAMES )  
FORD, )  
\_\_\_\_\_ )

CRYSTAL BASKINS, )  
 )  
STEPHANIE FORD, )  
 )  
JAMES FORD, )  
 )  
Appellants-Respondents, )

vs. )

No. 49A02-0611-JV-1038

MARION COUNTY DEPARTMENT OF CHILD )  
SERVICES, )  
 )

Appellee-Petitioner, )

and, )

CHILD ADVOCATES, INC., )  
 )

Co-Appellee (Guardian ad Litem). )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Victoria Ransberger, Judge Pro-Tem  
Cause No. 49D09-0501-JT-2156  
49D09-0408-JT-239  
49D09-0601-JT-2159

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**July 12, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Crystal Baskins is the mother of L.F., J.F.,<sup>1</sup> D.K., and D.E.<sup>2</sup> James Ford is the father of J.F., L.F, and J.E.F. Stephanie Ford is the mother of J.E.F. Because James is the father of two of Crystal's four children and Stephanie's child, the termination hearing was consolidated. Crystal, James, and Stephanie now appeal the termination of their parental rights. We affirm.

## Issues

Crystal raises one issue, which we restate as whether there is sufficient evidence to support the termination of her parental rights to L.F., J.F., D.K., and D.E. James raises one issue, which we restate as whether there is sufficient evidence to support the termination of his parental rights to L.F., J.F., and J.E.F. Stephanie raises one issue, which we restate as whether the termination of her parental rights to J.E.F. was proper even though she was only permitted to participate in the termination hearing via telephone.

## Facts<sup>3</sup>

D.K., D.E., and J.F. were alleged to be children in need of services ("CHINS") in 2003. In 2004, L.F. and J.E.F. also were alleged to be CHINS. All of the children were found to be CHINS and were placed in foster homes.

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<sup>1</sup> James has two children with the same name; to avoid confusion we refer to them as J.F. and J.E.F.

<sup>2</sup> D.K. and D.E.'s father, Levi Evans, is deceased.

<sup>3</sup> James and Stephanie are now divorced. James described his relationship with Crystal as "[o]ff and on." Tr. p. 172.

The Marion County Department of Child Services (“DCS”) eventually sought to terminate Crystal’s, James’s, and Stephanie’s parental rights. At the time of the termination hearing, Stephanie was in jail. Her request to be transported to the hearing was denied. She participated in the hearing via telephone and her attorney was present at the hearing. After the hearing, the trial court terminated Crystal’s, James’s, and Stephanie’s parental rights. All three now appeal.

### **Analysis**

“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). “We consider only the evidence and reasonable inferences that are most favorable to the judgment.” Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) 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 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; 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).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody of the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

### *I. Termination of Crystal's Parental Rights*

Crystal argues there is insufficient evidence that the reasons for placement outside the home of the parents will not be remedied<sup>4</sup> and that termination was in the children's best interests. In determining whether the conditions will be remedied, the trial court first should determine what conditions led the State to place the child outside the home, and second if there is a reasonable probability that those conditions will be remedied. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. "When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions." Id. "However, the trial court should also take into account the parent's habitual patterns of conduct as a means of determining the probability of future detrimental behavior, as well as the services offered by [DCS] to the parent and the parent's response to those services." In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

D.K., D.E., and J.F. were placed in the custody of the DCS because Crystal had been arrested for prostitution and failed to make arrangements for their care while she was in jail. L.F. was placed in DCS custody after James left her with an individual and did not return, and Crystal's whereabouts at that time were unknown. Since her involvement with the DCS began, Crystal has continued to use cocaine and has not successfully completed a drug treatment program. The termination hearing was held on

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<sup>4</sup> Crystal also argues the DCS did not prove there is a reasonable probability that the continuation of the parent-child relationship posed a threat to the children's well-being. However, because the statute is written in the disjunctive, the trial court need only find either that the conditions will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. Accordingly, we need not address this argument.

October 4, 2006, and Crystal tested positive for cocaine as late as September 19, 2006. Crystal also continued to be involved in criminal activity. This is evidenced by her prostitution conviction on July 6, 2006. Further, at the time of the final hearing, Crystal was not employed and was living in a one-bedroom apartment with her fiancé, where she had lived for four months.

This evidence is sufficient to show that the conditions that resulted in the children's removal will not be remedied. To the extent Crystal argues otherwise, she is asking us to reweigh the evidence. We must decline this request.

There is also sufficient evidence to support the trial court's finding that the termination of Crystal's parental rights was in the children's best interests. The case manager testified that adoption was in the children's best interest. Further, the guardian ad litem recommended termination and stated that reunification was not in the children's best interests. She indicated the children needed stability, which the parents could not provide.

This is sufficient evidence that termination of Crystal's parental rights is in the children's best interests. Again, Crystal's arguments to the contrary are simply requests to reweigh the evidence. The trial court properly terminated Crystal's parental rights.

## *II. Termination of James's Parental Rights*

James also argues there is insufficient evidence that the conditions that resulted in the children's removal from his custody would not be remedied.<sup>5</sup> James argues in large part that he is on the road to recovery and just needs more time "to make the necessary adjustments in his life . . . ." Appellant James's Br. p. 12. When the CHINS petition was filed as to J.F., James's involvement with J.F. was unclear. Regarding L.F. and J.E.F., they were removed from James's care because he left them with an individual and did not return. At the time of the termination hearing, James had not yet completed a drug rehabilitation program, he had been living in a halfway house for approximately two weeks, and had been working at Popeyes for approximately one month. James's employment history prior to Popeyes was not indicative of stable employment.

Although the evidence indicates that James had been participating in a drug rehabilitation program since July 2006 and that he was motivated to regain custody of his children, he has a history of unsuccessfully participating in drug rehabilitation programs. In fact, it appears that in 2005, James had been participating in a drug rehabilitation program and was "fast-tracked" because he was so motivated. However, he was dismissed from that program after seven months because of a positive drug screen. We certainly commend James for his sobriety at the time of the hearing and encourage him to continue on that path, but we conclude that his failure to complete a drug rehabilitation

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<sup>5</sup> Like Crystal, James argues he does not pose a danger to the children. However, because we conclude there is sufficient evidence to show that the conditions that resulted in the children's removal from the home will not be remedied, we need not address this argument. See C.C., 788 N.E.2d at 854.



program prior to the termination hearing taken with his prior unsuccessful attempts at rehabilitation support the trial court's finding that there is a reasonable likelihood that the conditions leading to placement outside the home would not be remedied.

James also asserts that there is insufficient evidence that termination of the parent-child relationship is in the children's best interests. As with Crystal, the case manager testified that adoption was in the children's best interests, and the guardian ad litem recommended termination, stating that reunification was not in the children's best interests. There is sufficient evidence to support the termination of James's parental rights.

### ***III. Termination of Stephanie's Parental Rights***

Stephanie argues that her parental rights were improperly terminated because her request to be transported from jail was denied and she was permitted to participate only via telephone. "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." Lawson v. Marion County Office of Family & Children, 835 N.E.2d 577, 579 (Ind. Ct. App. 2005). When the DCS seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. Id. at 580. Due process is described as the opportunity to be heard at a meaningful time and in a meaningful manner. Id. Due process turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. Id. "The balancing of these factors recognizes that although due process is

not dependent on the underlying facts of the particular case, it is nevertheless ‘flexible and calls for such procedural protections as the particular situation demands.’” Id. (citations omitted).

As we have previously observed in termination cases, the private interests are substantial. Id.

In particular, the action concerns a parent’s interest in the care, custody, and control of his children, which has been recognized as one of the most valued relationships in our culture. Moreover, it is well settled that the right to raise one’s children is an essential, basic right that is more precious than property rights. As such, a parent’s interest in the accuracy and justice of the decision is commanding. . . .

Id. (citations omitted). Here, however, Stephanie was permitted to and did testify on her own behalf. She was clearly able to interact with the trial court during the proceeding.

We must also consider the risk of error created by the permitting Stephanie to participate via telephone. Stephanie asserts the manner in which the hearing was conducted limited her ability to confer with her attorney because she was only permitted to do so during two recesses. She also points out that she was disconnected at one point and that it was hard to hear over the phone. Indeed, it appears that the call was disconnected at one point as the trial court attempted to move the phone to enable Stephanie to hear better. However, this only shows that the trial court was concerned about Stephanie’s ability to participate in the hearing. Moreover, Stephanie was represented by counsel who was present at the hearing and actively participated in the proceeding. Stephanie has not shown a significant risk of error based on her telephonic participation.

Finally we consider the countervailing governmental interest supporting use of the challenged procedure. Generally,

the State's *parens patriae* interest in protecting the welfare of the children involved is also significant. Delays in the adjudication of a case impose significant costs upon the functions of the government as well as an intangible cost to the lives of the children involved.

Id. (citations omitted). Specific to this case, the trial court pointed out that the motion to transport was made on short notice. In considering whether to continue the hearing, the DCS pointed out that this was a complicated case involving five children and three parents and indicated that it would have to recall the case manager. The guardian ad litem noted that one continuance had already been granted and requested that they proceed to trial at that time.

After balancing the competing interests, we conclude the trial court properly permitted her to participate via telephone. Stephanie was not denied due process by the denial of the motion to transport.

Stephanie also argues that the decision to transport was discretionary and that the trial court did not have discretion based on its reference to a policy to deny transport requests. See J.T. v. Marion County Office of Family and Children, 740 N.E.2d 1261, 1265 (Ind. Ct. App. 2000) (“In general, the decision whether to permit an incarcerated person to attend such a hearing rests within the sound discretion of the trial court.”), trans. denied, abrogated on other grounds by Baker v. Marion County Office of Family and Children, 810 N.E.2d 1035, 1039 (Ind. 2004). In support of her argument, Stephanie

points to the trial court's statement, "Given the executive committees over arching order that no transports were to be granted." Tr. p. 7.

However, a complete reading of the trial court's comments leads us to conclude that the trial court had the discretion to transport Stephanie. The trial court continued:

This matter is being afforded a speakerphone in order to allow Ms. Stephanie Ford the opportunity to participate. Her attorney has argued that her participation should be in person. The Court has heard argument on that, oral argument on the record and has rejected that argument, in favor of allowing her to participate by phone. Given the security risks associated with transporting a person from a correctional facility to the Court, and the other issues attendant to that, out here at Juvenile Court.

Id. Even assuming there is a "system wide policy" of denying transport orders, it is clear the trial court considered the totality of the circumstances and exercised its discretion in denying Stephanie's motion. Appellant Stephanie's Br. p. 6.

Finally, Stephanie argues that she has been diligent about completing services and wants to be reunited with her son, J.E.F. She contends, "The court's decision to terminate her parental rights was a difficult decision in which her in-person participation could have made the crucial difference." Appellant Stephanie's Br. p. 6. We disagree.

The case manager testified:

Stephanie is in and out of jail on prostitution charges and very [sic] other charges. She has called me on several occasions, saying that she wants [J.E.F.]. . . . She's called on several occasions saying, "Find a home for [J.E.F.]" And then she may call two weeks later and say, "Oh I want him." She's in and out. Just, she refuses to participate in any type of services. I cannot, she doesn't have a safe, she doesn't have a stable home environment. She doesn't have employment.

Tr. p. 113. Stephanie was not denied due process when she was permitted to participate in the termination hearing only via telephone.

### **Conclusion**

The trial court properly terminated the parental rights of Crystal, James, and Stephanie. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.