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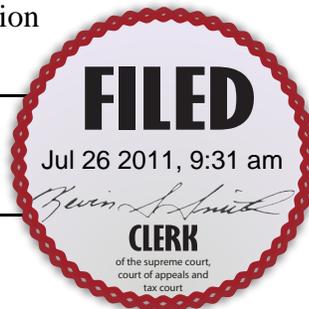
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP OF )  
K.B., Minor Child, )

M.B., Father, )  
Appellant-Respondent, )

vs. )

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )  
Appellee-Petitioner. )

No. 42A01-1101-JT-42

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APPEAL FROM THE KNOX SUPERIOR COURT  
The Honorable W. Timothy Crowley, Judge  
Cause No. 42D01-1004-JT-16

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**July 26, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

M.B. (Father) appeals the involuntary termination of his parental rights to his child K.B. As the evidence supports the judgment, we affirm.

### **FACTS AND PROCEEDURAL HISTORY**

Father is the biological father of K.B., who was born in June 2009. On the morning of July 9, 2009, the Indiana Department of Child Services (DCS) received a report that K.B.'s two-year-old sister was being transported to the hospital following a possible drowning. At the hospital, DCS case managers learned Father had discovered his two-year-old daughter in a swimming pool. The child left the family home and fell into the pool while R.A. (Mother)<sup>1</sup> was asleep on the sofa. Mother admitted she had spent the prior evening drinking alcohol and doing "shots of liquid hydrocodone" with Father and several friends. (Ex., Tab 2, Emergency Custody Order at 1.)

As the family waited at the hospital for news about the two-year-old, K.B. began vomiting. Doctors determined she was allergic to antibiotics she had ingested earlier that morning. Mother fed the antibiotics to K.B. after allegedly mistaking another child's bottle of antibiotics for a bottle of K.B.'s formula. As K.B. was being admitted to the hospital for overnight observation, her sister died in the emergency room. DCS took K.B. into emergency protective custody and filed a petition alleging K.B. was a child in need of services ("CHINS").

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<sup>1</sup> R.A. is the biological mother of K.B., but voluntarily relinquished her parental rights to K.B. and does not participate in this appeal.

Several days later, Father admitted K.B. was a CHINS, and the court adjudicated her as such. The court held a dispositional hearing, formally declared K.B. a ward of DCS, and directed Father to: (1) participate in a drug and alcohol evaluations and follow any resulting recommendations; (2) refrain from using illegal substances and/or misusing prescribed medications; (3) submit to random drug screens; (4) actively participate in individual counseling, including anger management and grief counseling if recommended; (5) obtain and maintain legal employment; (6) cooperate with service providers; and (7) use learned parenting skills in all interactions and participate in regular visitation with K.B.

Father's participation was sporadic and ultimately unsuccessful. In August 2009, Father violated probation and was incarcerated for fifteen days.<sup>2</sup> When released in September 2009, Father began participating in a few of the court-ordered services, including visits with K.B. and random drug screens. Father did not, however, participate in a drug and alcohol assessment, find stable housing or employment, or fully cooperate with caseworkers and service providers. In October 2009, Father was arrested in Illinois for burglary and aggravated battery. Father was convicted and remained incarcerated through the remainder of the CHINS proceedings. In April 2010 DCS petitioned for involuntary termination of Father's parental rights.

At a hearing in fall 2010, DCS presented evidence Father was unavailable to care for

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<sup>2</sup> Before K.B. was born, Father pled guilty to selling alcohol to a minor and received a 90-day suspended sentence.

K.B. because he was incarcerated in Illinois and his earliest release date was February 2012. Thereafter, he would face felony charges in Indiana for possession of methamphetamine. Father had not seen or communicated with K.B. for over a year and had not completed the court's dispositional goals. After the hearing, the trial court terminated Father's parental rights to K.B. because of Father's lengthy criminal history, history of substance abuse, pending criminal charges, lack of visitation with K.B., and noncompliance with the dispositional decree.

### **DISCUSSION AND DECISION**

We review termination of parental rights with great deference. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We will not reweigh evidence or judge credibility of witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences most favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a 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, cert. denied* 534 U.S. 1161 (2002).

When, as here, a judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). We determine first whether the evidence supports the findings and second 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). If the evidence and inferences support the trial court’s decision, we must affirm. *L.S.*, 717 N.E.2d at 208.

“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*. A trial court must subordinate the interests of the parents to those of the child, however, when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. The right to raise one’s own child should not be terminated solely because there is a better home available for the child, *id.*, but parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

To terminate a parent-child relationship in Indiana, 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; [and]
- (C) that termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2). The State must prove these allegations by clear and convincing evidence. *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009), *reh’g denied*. If the court finds

the allegations in the petition are true, the court must terminate the parent-child relationship. Ind. Code § 31-35-2-8.

Father challenges the sufficiency of the evidence supporting the trial court's findings under subsections (B) and (C) of Section 31-35-2-4(b)(2).

1. Reasonable Probability Conditions Not Remedied

Because our legislature wrote subsection (B) in the disjunctive, a trial court needs to find only one of the three requirements established by clear and convincing evidence before terminating parental rights. *See L.S.*, 717 N.E.2d at 209. Here, it found a reasonable probability the conditions resulting in K.B.'s removal and continued placement outside of Father's care will not be remedied.

In making such a determination, 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*. It must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *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 Cnty. Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider, as evidence of whether conditions will be remedied, the services offered to the parent by DCS, and the parent's

response to those services. *Id.* 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, 1290 (Ind. Ct. App. 2002).

In concluding there was a reasonable probability the conditions resulting in K.B.'s removal and continued placement outside of Father's care will not be remedied, the trial court found Father had been "incarcerated for most of [K.B.'s] life," was currently serving five-year sentences in Illinois for "robbery and aggravated battery," (App. at 5), and had a possession of methamphetamine charge pending in Knox County, Indiana. The court found Father had "failed to actively participate in individual counseling to address his issues," had been unable to visit with K.B. "since October 2009," and had "failed to comply with the Dispositional Decree" by refusing to submit to all random drug screen requests and by "testing positive on several occasions for THC and Methamphetamine." (*Id.* at 6.) The court noted Father did not submit to a drug and alcohol evaluation, obtain legal employment, or meet regularly with service providers and follow all recommendations. Those findings are supported by the record.

Home-based case manager Brandy Worland informed the trial court that Father's participation in her services had been "sporadic," he had not obtained housing, and he was "resistant to getting . . . any employment" prior to his incarceration in October 2009. (Tr. at 24-25.) Father attended only four of seven scheduled visits with K.B. before his

incarceration in late-August 2009. Father would sometimes bring his young nephew to visits with K.B. and “torment [the nephew] until he cried.” (*Id.* at 32.) Worland testified it was “very hard for [Father] to stay focused” during visits with K.B. and Father would “excuse himself” multiple times to leave the room during visits. (*Id.* at 33.) When K.B. cried during visits, Father could not console her and would “immediately hand [K.B.] to [Mother].” (*Id.*)

DCS family case manager Jennifer Pearl Beadles confirmed Father refused to submit to several random drug screen requests, never obtained employment or stable housing, did not engage in individual counseling, including anger management and grief counseling, and remained incarcerated and unavailable to parent K.B. at the time of the termination hearing. She believed there was not a reasonable probability Father would remedy the conditions that resulted in K.B.’s removal in the future in light of Father’s lengthy criminal history and unresolved substance abuse issues. Beadles testified, “Whenever [Father] would have his short jail sentences, he would use after he would be released. So, I’m unsure if he would be able to maintain sobriety once he’s out.” (*Id.* at 109.) Even after K.B.’s removal during the CHINS proceeding, Father engaged in criminal activities that resulted in his incarceration. When not in jail, Father did not fully participate in and successfully complete the court-ordered reunification services, and thus remains unable to demonstrate he can provide for K.B.

Clear and convincing evidence supports the determination that there is a reasonable probability the conditions leading to K.B.’s removal and continued placement outside

Father's care will not be remedied. Father's arguments to the contrary are an invitation to reweigh the evidence, which we may not do. *See In re L.V.N.*, 799 N.E.2d 63, 70-71 (Ind. Ct. App. 2003) (declining to reweigh evidence based on mother's allegations where evidence presented by DCS demonstrated circumstances were unlikely to change).

## 2. Best Interests of the Child

DCS also proved termination of Father's parental rights is in K.B.'s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by DCS and look to the totality of the evidence. *McBride v. Monroe Cnty. Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* Recommendations from the case manager and child advocate that it would be in the child's best interest to terminate the parent-child relationship, 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. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

The trial court made several findings pertinent to its conclusion that termination of Father's parental rights is in K.B.'s best interests. It found Father's "continuing drug and criminal issues[,] and his period of incarceration out[-]of[-]state make reunification . . . impossible." (App. at 6.) The court acknowledged Father loves K.B., but found he had been neither "able, [n]or willing, since the removal of [K.B.], to do the things necessary to bring

about reunification with the child,” thereby putting K.B. “at risk.” (*Id.* at 5-6.) The court went on to find Father could not “regularly and consistently meet the needs of the child.” (*Id.* at 6.) These findings, too, are supported by the evidence.

Worland indicated she did not believe there was a bond between Father and K.B., because K.B. never responded to Father as if she recognized his voice during visits. In explaining the importance of obtaining permanency for K.B. “as soon as possible,” Beadles stated K.B. “only lived in the home of [Father] and [Mother] a few weeks at birth. There is no bonding there . . . and [K.B. has] adjusted very well to her paternal aunt.” (Tr. at 66.) Beadles testified K.B. “seems to [have] really flourish[ed]” in her current pre-adoptive placement. (*Id.* at 70.)

Based on the totality of the evidence, including Father’s history of criminal activity both before and after K.B.’s removal from the family home, his incarceration at the time of the termination hearing, his unresolved substance abuse issues, and his inability to demonstrate he is capable of providing K.B. with a safe and stable home environment, coupled with the testimony from Worland and Beadles recommending termination of the parent-child relationship, we conclude there is clear and convincing evidence that termination of Father’s parental rights is in K.B.’s best interests.<sup>3</sup>

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<sup>3</sup> Contrary to Father’s assertion, his circumstances are not analogous to those in *Rowlett v. Vanderburgh Cnty. Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. There, we held a trial court erred by concluding termination was in the children’s best interests because Rowlett had maintained a relationship with his children while in prison, communicating by letters and phone calls; while in prison he had

## CONCLUSION

The record supports the trial court's findings and conclusions that the reasons for removal had not been remedied and termination was in K.B.'s best interests, and those conclusions support the court's decision to terminate Father's parental rights. Accordingly, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.

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spent an enormous amount of time engaged in services to improve himself; and he was to be released six weeks after the dispositional hearing. *See id.* at 622-23. Herein, K.B. does not know Father, Father has not been communicating with K.B., and Father's ultimate release date is unknown, as he still has charges pending.