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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MATTER OF THE )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF J.P. AND J.W., )

BRET WALTERS, )

Appellant, )

vs. )

No. 02A03-0702-JV-62

ALLEN COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee. )

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Lori K. Morgan, Magistrate  
Cause Nos. 02D07-0602-JT-45 and  
02D07-0602-JT-47

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**August 7, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE FACTS

Bret Walters (“Father”) appeals the trial court’s order terminating his parental relationship with J.W. and J.P. (“Children”).

We affirm.

### ISSUE

Whether sufficient evidence supports the termination of Father’s parental relationship with Children.

### FACTS

Bret Walters is the father of J.W., born on May 2, 2002, and allegedly the father of J.P., born on December 9, 2003. On May 14, 2004, the Allen County Department of Child Services (“DCS”) received a referral stating that Children were living with their biological mother, Alisha Pitman (“Mother”), in a home without a refrigerator, gas, electricity, water and being unsanitary.

On May 18, 2004, Justin Goree, the DCS investigating case manager, arrived at Mother’s home and found the home in a deplorable state – lacking a refrigerator, gas, electricity, water and was unsanitary. Inside the home “old food [was] lying around and the Children were filthy and dirty.” (Tr. 23). DCS removed Children from Mother’s home. At the time of their removal, Father was incarcerated at the Kentucky State Penitentiary. An initial hearing was held on June 16, 2004, and the trial court determined that “Children [we]re in need of services.” (App. 149).

Florence O’Neal, DCS on-going case manager, was able to assist Mother by setting her up with the Parent Participation Plan to help Mother with her parenting and housekeeping skills. Mother did well with the assistance that O’Neal provided and was

reunited with Children on August 19, 2005. Eventually, Mother's parenting and housekeeping skills deteriorated, and again her home "was not very clean," and Children were filthy. (Tr. 81).

In January of 2006, Children were removed from the home for a second time. On March 8, 2006, Mother and Father were both found to be in substantial non-compliance with the Parent Participation Plan. The trial court found that "it is in the children's best interest that parental rights be terminated and the children be placed for adoption." (App. 169) The trial court also found that the "conditions which led to the removal of the children [we]re not likely to be corrected." (App. 172). At the permanency plan review hearing on August 29, 2006, both Mother and Father were again found to be in substantial non-compliance with the Parent Participation Plan. The trial court set a final termination hearing for November 15, 2006.

At the final termination hearing, O'Neal testified that Father had stated to her that he "would never be able to care for his children." (Tr. 42). Father testified at the final termination hearing that he currently resided at the Kentucky State Penitentiary. Further, Father admitted that his only income was approximately "two (2) dollars a day," and that he was not in a position to financially support Children. (Tr. 74). Father also admitted that he was not able to provide care or supervision for Children.

On December 11, 2006, the trial court issued its order of termination. The trial court found that Father had failed to be involved with and to provide materially or financially for Children's well-being from the time of their removal until the time of the final hearing. The trial court found that Father was unable to provide the basic

necessities for a suitable home for Children. The trial court also found that DCS had proved by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in Children's removal will not be remedied.

### DECISION

A parent has a constitutional right to raise his or her children, but this right "is not absolute and must be subordinated to the children's interest when the children's emotional and physical development is threatened." *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1249 (Ind. Ct. App. 2002), *trans. denied*. Parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *reh'g denied, trans. denied*. We do not terminate these rights to punish a parent, but to protect the child. *Id.* Moreover, the trial court need not wait until the child is irreversibly influenced by his deficient lifestyle such that his physical, mental, and social growth is permanently impaired before terminating the parent child relationship. *Castro v. State of Indiana Office of Family and Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006), *trans. denied* (quoting *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002)).

The appellate court will not set aside a trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Id.* Where, as here, the trial court enters findings of fact, a two-tier standard of review will be employed. *Id.* First, we determine whether the evidence supports the findings. Next, we determine whether the findings support the judgment. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusion or the conclusions do not support the judgment." *Bester v.*

*Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005)).

When reviewing the sufficiency of the evidence to support the judgment of involuntary termination of the parent-child relationship, we neither reweigh the evidence nor judge the credibility of witnesses. *Castro*, 842 N.E.2d at 372. Rather, we consider only the evidence and reasonable inferences therefrom which are most favorable to the judgment. *Id.*

When the Office of Family and Children seeks to terminate parental rights, the Office must plead and prove in relevant part that:

- (A) The child has been removed from the parent for at least six (6) months under a dispositional decree; . . .
- (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).

Father argues that the decision to terminate his parental rights was not supported by clear and convincing evidence. Father specifically argues that DCS failed to establish that there was a reasonable probability that the conditions which resulted in Children’s removal would not be remedied. We disagree.

To determine whether there is a reasonable probability the conditions justifying a child’s continued placement outside the home will be remedied or not, “the trial court must judge a parent’s fitness to care for [his] children at the time of the termination and

take into consideration evidence of changed conditions.” *Prince v. Dept. of Child Services.*, 861 N.E.2d 1223, 1229 (Ind. Ct. App. 2007). Here, Father presented no evidence of any changed conditions with respect to his parenting of Children from May 18, 2004, until the time of the final hearing.

On May 18, 2004, Goree removed Children from Mother’s home because the home was found in a deplorable state – lacking a refrigerator, gas, electricity, water and was unsanitary. Father was not present because he was incarcerated at the Kentucky State Penitentiary. As we stated in *Perry v. Elkhart Office of Family and Children*, 688 N.E.2d 1303, 1305 (Ind. Ct. App. 1997), “[a]lthough the mother had legal custody and the father was incarcerated, the child was effectively removed from the custody of both parents when taken from the mother and placed in foster care.”

An initial hearing was held on June 16, 2004, and the trial court found that Children were in need of services. Subsequently, several hearings were held in order to reunite Children with Mother. Children were reunited with Mother on August 19, 2005, but Children were taken again in January of 2006, for non-compliance. On March 8 and August 29, 2006, Father was found to be in non-compliance with the Parent Participation Plan.

At the final termination hearing, DCS case manager, O’Neal, testified that Father had stated to her that he “would never be able to care for his children.” (Tr. 42). Further, Father reported at the final hearing that he currently resided at the Kentucky State Penitentiary. He also admitted that he was not able to provide care or supervision for

Children. In addition, Father conceded that his only income was approximately “two (2) dollars a day,” and that he was not in a position to financially support Children. (Tr. 74).

In *Perry*, the court held that evidence supported termination of parental rights. Perry specifically argued that the State had failed to show that the conditions causing his daughter to be placed in foster care were not likely to be remedied. Perry was incarcerated at the time of the termination hearing and, while incarcerated, he made no effort to contact his daughter for over three years. Similar to the father in *Perry*, who was incarcerated at the time of the termination hearing and made no effort to contact his daughter during his incarceration, Father, too, failed to establish contact with Children while he was incarcerated. Nor did he make any effort during his incarceration to contact or inquire about the health and welfare of Children. Father also did not pay child support, or provide the basic necessities for a suitable home for Children.

It is undisputed that Children had been removed from the parents’ care and custody for more than six months at the time of the final hearing. It appears to be undisputed that there was a satisfactory plan for the care and treatment of Children, namely adoption. Father does not appear to challenge the fact that termination would be in the best interest of Children; but simply argues that the termination was not supported by clear and convincing evidence. We disagree and find that the evidence before the trial court supported the conclusion that the conditions that resulted in Children’s removal or the reason for placement outside the home of the parents will not be remedied. Therefore, the decision to terminate Father’s parental rights was supported by clear and convincing evidence.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.