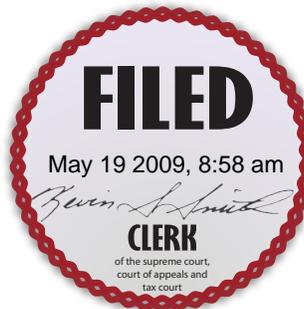


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT CHILD RELATIONSHIP)
OF D.H., Minor Child, and)

D.H., Father,)
Appellant-Respondent,)

vs.)

No. 34A02-0901-JV-10

INDIANA DEPARTMENT OF CHILD)
SERVICES,)

Appellee-Petitioner.)

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0808-JT-19

May 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

D.H. (“Father”) appeals the termination of his parental rights to his son, D.H., claiming that the Howard County Department of Child Services (“HCDCS”) failed to prove by clear and convincing evidence that the conditions resulting in D.H.’s removal and continued placement outside Father’s care would not be remedied and that continuation of the parent-child relationship poses a threat to D.H.’s well-being. Concluding that the trial court’s judgment is not clearly erroneous, we affirm.

Facts and Procedural History

Father is the biological father of D.H., born June 18, 1994. On July 24, 2007, HCDCS became involved with D.H. when it substantiated a report that D.H. and a sibling were living in homes of unrelated persons while the family residence was without utility services. Another sibling was being left unsupervised for long periods of time. HCDCS took custody of all three children pursuant to a verbal detention order and placed them in foster care. At the time of the children’s removal, Father was incarcerated in the Howard County Jail on pending charges of dealing and possession of cocaine.

On September 24, 2007, the trial court adjudicated D.H. a CHINS because he had no parent who could care for him. Father appeared at a dispositional hearing on October 29, 2007, after which the trial court ordered that (1) D.H. was a ward of HCDCS effective August 8, 2007; (2) D.H. should continue in foster care; and (3) Father should continue to cooperate with HCDCS and to work with CASA.

On February 4, 2008, the trial court held a review hearing and found that Father, who had bonded out of jail, was too unstable to provide custodial care for D.H. On

August 13, 2008, HCDCS filed a petition for the involuntary termination of the parent-child relationship between D.H. and his Father and Mother. The trial court held an initial hearing on the petition, and Mother voluntarily relinquished her rights.¹ On November 3, 2008, the trial court held a fact-finding hearing pertaining to Father's rights, and it subsequently entered its termination order. This appeal ensued.

Discussion and Decision

The traditional right of a parent to establish a home and raise his child is protected by the Fourteenth Amendment of the United States Constitution. *In re I.A.*, 903 N.E.2d 146, 152 (Ind. Ct. App. 2009). Parental rights may be terminated when a parent is unable or unwilling to meet his parental responsibilities. *Id.* The purpose of terminating parental rights is not to punish a parent but to protect the child. *Id.*

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *Id.* at 152-53. Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *Id.* at 153. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* When reviewing findings of fact and conclusions thereon in a case involving termination of 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.* The trial court's judgment will be set aside only if it is clearly erroneous. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the

¹ Mother is not a party to this appeal.

conclusions do not support the judgment.” *Id.* (quoting *In re R.J.*, 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

Indiana Code § 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Indiana Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” Indiana Code § 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

(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 Ind. Code § 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.

The Department of Child Services must establish these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234-35 (Ind. 1992); *Doe v. Daviess County Div. of Children & Family Servs.*, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), *trans. denied*. The termination court is required to look at the totality of the evidence to assess parental fitness and to determine the child's best interests. *In re D.L.*, 814 N.E.2d 1022, 1030 (Ind. Ct. App. 2004), *trans. denied*.

Initially, we note that Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, so the trial court need find by clear and convincing evidence only one of the two requirements of subsection (B). *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Therefore, we only address Father's argument that HCDCS failed to meet its burden of proving that the conditions justifying D.H.'s removal and continued placement outside the home will not be remedied.

Father argues that D.H. was removed from the home because he was incarcerated, but at the time of the termination hearing Father was no longer incarcerated. Father further argues that he was not given enough time after his release from jail to establish his ability to care for D.H.

The following trial court findings are relevant:

19. During Father's testimony at the termination fact-finding hearing, Father acknowledged that he had not visited with his son since the initiation of the CHINS cause of action. [Father] testified that he had been too busy trying to get employment, pay his bills, and just taking care of business to visit with [D.H.] When asked why he didn't contact [HCDCS] or the Villages to set up visits with his son, [Father] responded that [HCDCS] should have brought the child to him. In sum, Father has not been a part of his son's life and demonstrated a total lack of interest in his son's life by failing to

keep [HCDCS] informed of his whereabouts, contacting [HCDCS] personnel or service providers about the welfare of his child or to set up visitation between himself and his son.

20. The Court finds that [HCDCS] took reasonable steps to keep Father informed of the child in need of services and about [D.H.'s] condition and progress and further that [HCDCS] took reasonable steps to locate Father and offer him services.
21. As a child of almost fourteen (14) years of age, [D.H.] requires the security of a safe nurturing environment and routine providing him with stability. Most importantly, [D.H.] needs permanency in his life.
22. The Court finds that [HCDCS] made reasonable efforts to reunify the child with his father.
23. In the judgment of the Court, [Father] is likely to never adequately care and provide for [D.H.] as a custodial parent.

25. The Court finds that Father's lack of participation in services, specifically his lack of visitation with his own child demonstrates a pattern or inability to care for his child. Father has shown no interest in services, cooperating with [HCDCS], providing case managers and service providers with his contact information or even inquiring about the well-being of his son. He chose not to participate in services and his son's life.
26. The Court finds by clear and convincing evidence that it is reasonably probable the conditions that led to the removal and that led to placement outside the home, namely Father's incarceration and his inability to care for his child and provide him with a stable and suitable environment and provide him with the necessary care he will require during the course of his life, will not be remedied to the degree that he will be able to provide the child with the nurturing, stable, and appropriate care and environment that he requires on a long term basis. The Court need not wait until a child is irreversibly harmed such that his or her physical, mental and social development is permanently impaired before terminating a parent-child relationship.

Appellant's App. p. 21-22 (citations omitted).

In assessing a parent's fitness to care for a child, the trial court should view the parent at the time of the termination hearing and take into account any evidence of changed conditions. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. Further, the trial court must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Our examination of the transcript and the record discloses that at the time of D.H.'s removal from the family home, Father was incarcerated. As a result of his incarceration, he could not provide for D.H.'s needs. There is no evidence of any changed conditions in Father's ability to provide for D.H. As noted above, after Father's release from jail, he never bothered to visit D.H. or to contact HCDCS to begin working on reunification. Indeed, as the trial court found, Father expected HCDCS to bring D.H. to him. The trial court did not err in concluding that the HCDCS presented clear and convincing evidence to support the termination of Father's parental rights.²

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.

² We note that Father had from December 11, 2007, the date of his release from jail, until November 3, 2008, the date of the final termination hearing, to begin reunification with D.H. Instead, Father did nothing.