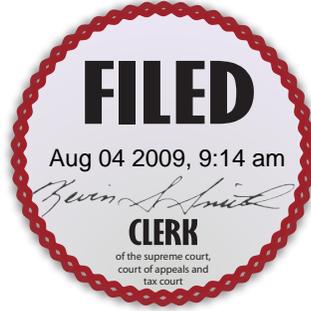


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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In the Matter of the Termination of the )  
Parent-Child Relationship of R.F., Minor )  
Child, and R.E.F., Father, )  
 )  
R.E.F., )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD )  
SERVICES, DELAWARE COUNTY DIVISION, )  
 )  
Appellee-Petitioner. )

No. 18A04-0901-JV-11

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable Richard A. Dailey, Judge  
The Honorable Brian M. Pierce, Master Commissioner  
Cause No. 18C02-0801-JT-13

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**August 4, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

R.E.F. (“Father”) appeals the involuntary termination of his parental rights as to R.F. Father presents the following restated issue for our review: whether there was sufficient evidence to support the trial court’s decision to terminate his parental rights.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

R.F. was born on November 1, 1999, and lived with his mother. Father, who had been diagnosed in 1997 with schizophrenia, paranoid type, never had physical custody of R.F. On May 26, 2006, R.F. was removed from his mother’s home by order of the court. He was adjudicated to be a child in need of services (“CHINS”) on July 24, 2006 and was never returned to the care of either of his parents. R.F.’s paternal uncle and aunt obtained a foster parent license, and in August 2006, R.F. was placed in their care, where he has remained to date.

Father’s criminal history includes convictions for identity deception, possession of a handgun, and violating a restraining order. *Appellee’s Br.* at 2. Father was incarcerated for a probation violation in June 2006 and is not scheduled for release until October 2009.

On August 29, 2006, the trial court issued a “Dispositional and Parent Participation Order,” which set forth a plan of care to “alleviate the conditions which resulted in the necessity to adjudicate [R.F. a] CHINS.” *State’s Ex.* 5 at 14. Between November 13, 2006 and December 3, 2007, the trial court held three periodic case reviews pursuant to Indiana Code section 31-34-21-2.<sup>1</sup> On January 18, 2008, the Indiana

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<sup>1</sup> Pursuant to Indiana Code section 31-34-21-2(a), “The case of each child in need of services under the supervision of the [Department of Child Services] must be reviewed at least once every six (6) months, or more often, if ordered by the court.”

Department of Child Services (“DCS”) filed a petition for the involuntary termination of the father-child relationship. *Appellant’s App.* at 9. At the initial termination hearing, Father was appointed a public defender and was ordered to have a psychological evaluation. *Appellant’s Br.* at 2. On October 30, 2008, the trial court held a fact-finding hearing, and on December 10, 2008, the trial court issued an order terminating Father’s parental rights as to R.F. Father now appeals.

### **DISCUSSION AND DECISION**

Father challenges the sufficiency of the evidence supporting the trial court’s decision to terminate his parental rights as to R.F. More specifically, he argues that the DCS did not prove by clear and convincing evidence 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, and the continuation of the parent-child relationship poses a threat to the well-being of the child.

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, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), *trans. denied*. We consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings and conclusions in terminating the Father’s parental rights. Where the trial court enters specific findings of fact and

conclusions thereon, we must first determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 265. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

“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*. However, these parental rights are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *K.S.*, 750 N.E.2d at 836. The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied, cert. denied*, 534 U.S. 1161 (2002). 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, 372 (Ind. Ct. App. 2006), *trans. denied* (citing *In re E.S.*, 762 N.E.2d 1287,

1290 (Ind. Ct. App. 2002)).

To effect the involuntary termination of a parent-child relationship, the DCS is required to allege and prove that:

- (A) [o]ne (1) of the following exists:
  - (i) 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); *In re A.B.*, 887 N.E.2d 158, 164 (Ind. Ct. App. 2008). DCS must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). Father does not dispute that the evidence introduced at the fact-finding hearing proved elements (A), (C), and (D). Instead, he contends that the evidence was not clear and convincing as to (B).

Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and requires proof either 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. Ind. Code § 31-35-2-4(b)(2)(B) (emphasis added). R.F. was removed from his mother's home

because of “drug-related allegations and unsafe living conditions.” *Appellant’s Br.* at 6. Father, who was not involved in R.F.’s life due to various incarcerations and a restraining order, contends he “has not been given the opportunity to provide any type of home for [R.F.]” *Appellant’s Br.* at 10. The thrust of Father’s argument is that, by virtue of the fact that he never had custody of R.F., he has been unable to remedy the conditions that led to R.F.’s removal or continued placement outside the home as required by Indiana Code section 31-35-2-4(b)(2)(B)(i).

Assuming, without deciding, that there was insufficient evidence as to Father’s ability to remedy the conditions that resulted in R.F.’s removal, the trial court’s decision to terminate Father’s parental rights can be upheld if the DCS proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of R.F. Father claims that the DCS did not satisfy this burden, and that the trial court’s finding that it did was “premature.” *Appellant’s Br.* at 12, 13. For support, Father cites to *In re E.S.*, 762 N.E.2d 1287, 1292 (Ind. Ct. App. 2002) , in which we reversed the termination of parental rights in part because there was not yet clear and convincing evidence that the continuation of the parent-child relationship posed a threat to E.S.’s well-being. In that case, the trial court terminated the parental rights after finding that the child’s behavior improved when the court terminated the mother’s visitation rights. On appeal, mother argued that such termination was premature because at the same time her visitation was terminated, E.S. was also experiencing changes in her foster home, her medication, her therapist, and her therapy methods. In reversing the trial court’s termination, we agreed with mother that, “[b]ecause visitation had never been

reintroduced, it could not be proven that maintaining the parent child relationship posed a threat to E.S.” *In re E.S.*, 762 N.E.2d at 1291.

Unlike in *In re E.S.*, where the danger to the child was deemed to be reflected in the child’s behavior, here, we determine the threat to R.F.’s well-being by looking at Father’s behavior. Under the following facts, we cannot say that the termination of Father’s parental rights is premature. During the October 30, 2008 fact-finding hearing, Dr. Paul Spengler, a health service provider who performed a seven-hour psychological evaluation on Father, testified that his tests results were “highly consistent” with Father’s prior diagnosis of schizophrenia, paranoid type. *Tr.* at 15. He also testified that, while the symptoms of this type of schizophrenia can be controlled with medications, Father takes his “oral medications unreliably.” *Id.* at 16-17. This unreliable behavior has resulted in Father’s prison medications being given through court-ordered intramuscular injection. *Id.* Dr. Spengler noted that Father does not see a need for medication because he has a poor understanding of the connection between the use of the medication and his diminishing symptoms. *Id.* at 17. “This poor understanding of the need for medication . . . [puts] him at a high risk for unsafe parenting.” *Id.* at 19.

The DCS case manager handling R.F.’s case testified that she met with Father at the prison in December 2007. At that meeting, Father explained that “he was incarcerated but was in there because he was working for the FBI. . . . [H]e said that at times he was also Jehovah and that he was incarcerated for a period of time under false pretenses and that the Mayor would visit him on a regular basis in exchange for sexual favors to reduce his sentence.” *Id.* at 33. The case manager also testified that the

continuation of the parent-child relationship poses a threat to the well-being of R.F. because, “Father has a long history of substance abuse and incarcerations and there’s also a high concern . . . [according to Dr. Spengler’s report that Father] has no plans to take his medication for his schizophrenia after his release from incarceration.” *Id.* at 36.

C.F., Father’s brother who was entrusted with R.F.’s care, testified that Father has never had custody of and has never parented R.F. *Id.* at 44. C.F. described some positive as well as negative interactions between R.F. and Father. *Id.* at 45-48. C.F. noted that Father, who is thirty-two years old, has lived on his own for less than a year during his adult life. The rest of the time, Father has lived in various locations, including with his mother, with his father, with C.F., with his girlfriend, and in jail and prison. *Id.* at 11, 42, 43, 46, 61. Additionally, Father has never had steady employment. *Id.* at 43.

While only required to give a neutral recommendation, the CASA noted a concern about Father’s mental health and his ability to care for R.F. The CASA reported that “permanency for [R.F.] is important for his life,” and that he has been well adjusted in the home of his aunt and uncle. *Id.* at 76. The CASA further noted that R.F. is doing well in school and is involved in activities and sports. *Id.* The CASA suggested that R.F. should remain with C.F. and his wife. *Id.*

The trial court considered the evidence presented, and made the following pertinent findings to support its order terminating the parent-child relationship between Father and R.F.:

6. That [Father] has been diagnosed with schizophrenia, paranoid type.
7. That [Father] is currently incarcerated at the . . . Correctional facility’s Psychiatric Unit.

8. That [Father] has a poor history of voluntarily taking medications necessary to control the symptoms associated with his diagnosed condition.
9. That [Father] is currently receiving such medication by court ordered intramuscular injection.
10. That [Father] has a poor understanding of the medications he is taking and their relationship to the control of the symptoms associated with his diagnosed condition.
11. That such poor understanding would likely require the structure of some other person or agency to ensure that he takes his medication.
12. That such poor understandings place [Father] at a high risk for unsafe parenting.
13. That [Father] hopes to be released from incarceration in September of 2009.
14. That [Father] has never had custody of [R.F.].
15. That [Father] has never parented [R.F.].
16. That while there have been some positive interactions between [Father] and [R.F.], there have been several instances of dangerous interactions between them.
17. That in 2003, [R.F.] was brought to the Muncie Mall by [Father] and was found by his uncle, [C.F.], roaming the Muncie Mall without supervision.
18. In 2006, C.F. brought [R.F.] to Muncie for a visit with his family and [Father] drove a car down the street with the child on his lap.
19. That on one occasion while [R.F.] and C.F.'s children were playing in the backyard, [Father] shot a firearm into the woods from the back of C.F.'s home.
20. That [Father] has not had stable housing or employment during the time in which DCS has been involved with this case.
21. That since the child has been placed in relative care, the child has shown systematic and consistent improvement in his development.
22. That the child needs a safe, stable, secure and permanent environment in order to thrive. [Father] has shown neither the inclination nor the ability to provide the child with such environment.

*Appellant's App.* at 66-67. The evidence most favorable to the judgment supports these findings, which in turn support the trial court's conclusion that the continuation of the parent-child relationship poses a threat to the well-being of R.F.

Father has been unable to maintain stable employment or stable housing, and he has been habitually unavailable to parent R.F. since R.F.'s birth in 1999. It is not clear

from the record before us why Father was the subject of a protective order or why he never had custody of R.F. It is also unclear exactly how many years of R.F.'s life Father spent incarcerated. What is clear is that Father has been habitually unable to care either for himself or for R.F. Father's habitual patterns of conduct, considered in light of his inability to understand and voluntarily medicate his schizophrenia, suggest that, under Father's care, R.F. would likely be subject to future neglect or deprivation. The DCS presented clear and convincing evidence that there is a reasonable probability that the continuation of the parent-child relationship poses a threat to R.F.'s well-being. The trial court's decision to terminate Father's parental rights as to R.F. is supported by the evidence and the findings.

This Court will reverse a termination of parental rights “only upon a showing of “clear error” – that which leaves us with a definite and firm conviction that a mistake has been made.” *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly*, 592 N.E.2d at 1235). We find no such error here.

Affirmed.

NAJAM, J., and BARNES, J., concur.