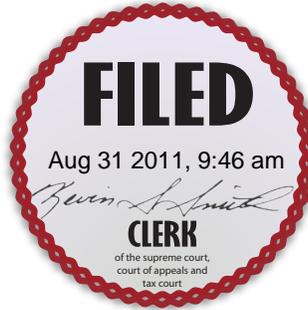


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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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 )  
I.N. and J.T-R., Minor Children, )

D.R.N., Jr., Father, )

Appellant-Respondent, )

vs. )

No. 20A03-1101-JT-19

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee-Petitioner, )

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Terry C. Shewmaker, Judge  
The Honorable Deborah A. Domine, Magistrate  
Cause Nos. 20C01-1008-JT-56 and 20C01-1008-JT-57

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**August 31, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

D.N., Jr. (Father) appeals the involuntary termination of his parental rights to I.N. and J.T.-R. (collectively “the children”).<sup>1</sup> We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In September 2009, the Department of Child Services (DCS) removed the children from their Mother’s custody because their younger brother drowned in a bathtub while all three children were in Mother’s care. At the time of the incident, Father was in North Carolina. Initially, the children were placed with their paternal grandparents, who lived in Michigan. Shortly thereafter, the children were placed in foster care because the paternal grandparents moved to Florida.

On September 28, 2009, Mother admitted the children were in need of services (CHINS) based on their sibling’s recent drowning. At that time, the court ordered Father to participate in a psychological parenting assessment and follow all recommendations therefrom, participate in individual and family therapy, complete and successfully pass random drug screens, complete an addictions assessment if the drug screens were positive, and maintain regular contact with the DCS case manager. The CHINS order also permitted Father to exercise partially supervised visitation with his children.

During the pendency of the CHINS and termination proceedings, Father failed to complete his psychological parenting assessment; did not attend therapy; completed one drug screen, which was positive for marijuana; failed to complete an addiction assessment after his

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<sup>1</sup> A.T.-R. (Mother) voluntarily terminated her rights to the children and does not participate in this appeal. We therefore limit our discussion to the facts relevant to Father.

initial failed drug test; moved to North Carolina without informing the DCS case manager, and quit attending visitation with the children. He also failed to attend multiple hearings regarding the placement and status of his children.

On January 11, 2010, the children were placed with Mother's maternal grandmother, where they remained for the duration of the proceedings. On August 10, DCS filed a petition for the involuntary termination of Mother and Father's parental rights to the children. At the final hearing on September 2, 2010, Mother voluntarily terminated her parental rights. Father failed to attend the hearing, and his attorney procured a continuance. On January 10, 2011, Father participated in the rescheduled final hearing regarding his parental rights, at which DCS case manager Lolita McNeal, CASA Sherry Housand, and Father testified. The next day, the trial court entered an order terminating Father's parental rights.

### **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 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*. However, a trial court must subordinate the interests of the parents to those of the child 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 will not be 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 the children'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 children 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 Father would not remedy the conditions resulting in the children's removal and continued placement outside of Father's care, the trial court found:

The children have been removed from the parents and have been under the supervision of DCS for at least fifteen (15) months of the most recent twenty-two (22) months. . . . The children could never be placed in the care of their Father. While [Father] has verbally acknowledged that he is the father of [the children], he has never established paternity, nor has he ever been involved in any other legal action to obtain legal custody of the boys that he calls his sons. Another factor in the children not being placed in the care of [Father] was the fact that he moved repeatedly and was lacking the stability required to care for two young children.

(App. at 12.) The trial court noted Father "has not participated in any of the services that have been offered to him with the intent of preparing him as a possible placement for the child[ren]," (*id.* at 13); tested positive for marijuana; never paid child support; and did not visit his children after June 2010. The children had been adjudicated CHINS previously because I.N. ingested some of his paternal grandmother's methadone. Finally, the court stated, "Father is no better prepared today to have custody of his alleged sons than he was sixteen months ago." (*Id.* at 13.)

Father disputes the finding that he "moved repeatedly between North Carolina and

Michigan,” (*id.* at 13), claiming the finding was not supported by clear and convincing evidence. The record indicates that, during the sixteen months his children were in DCS’s care, Father moved from North Carolina to Michigan, stayed briefly in Indiana, moved back to North Carolina, and finally returned to Michigan. That evidence supports the trial court finding Father moved repeatedly.

Father also challenges the trial court’s finding he is “lacking the stability required to care for two young children.” (*Id.* at 12.) At the termination hearing on January 10, 2011, Father testified he had been employed since September 2010 and lived with his current girlfriend and her mother. However, Lolita McNeal, the DCS case manager assigned to the case, testified:

[Father] has not shown that he can care for the children. He’s not shown that he’s stable. I still don’t know, you know, about his employment. I still don’t know where – how he’s living. . . . [Father] has put little – put forth little effort (indiscernible) to complete the services that he needed to do so that the children could be returned to his care.

(Tr. at 91.) Father’s argument is an invitation for us to reweigh the evidence, which we cannot 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).

Father has failed to prove that the findings were not supported by the evidence, and those findings support the trial court’s conclusion that the circumstances prompting the children’s removal would not be remedied.

## 2. Best Interests of the Child

DCS also proved termination of Father's parental rights is in the children'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 termination of the parent-child relationship would be in the child's best interests, 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).

Regarding the children's best interests, the court found:

In their young lives, [the children] have already experienced the death of their brother, and they have lost their mother to incarceration. Both the CASA and case manager testified that since being removed from the parents' care, the maternal great grandmother has provided the children with a stable home and loving care and they have adjusted. The case manager described that to place the children with their father would be a threat to their welfare and best interest because he has done so little to date and would likely be unable to provide the children with the stability they need to continue to thrive.

(App. at 14-15.) Father could not refute evidence he had not cooperated with the dispositional order's requirements and the children were thriving in their placement. Rather, at the hearing, he argued he "was willing to [take care of his children] from the start, but [he] just didn't want to have to go through all this[.]" (Tr. at 120.)

Sherry Housand, the CASA, testified termination of Father's parental rights was in the best interest of the children because "[Father]'s been very irresponsible. Not showing up for meetings or doing what he was ordered to do, or visiting the children regularly." (*Id.* at 103-04.) She stated the children needed "[a] stable home and – and loving care, which I think they are getting presently." (*Id.*) When asked if termination was in the best interests of the children, DCS caseworker McNeal testified:

[Father] is not consistent. He's not been stable in his sons' lives. He – he comes and he goes. He – he does visits with the children and he'll disappear for a few months at a time. The children need a safe, stable home environment where their needs are met. [Father]'s had so many opportunities to – to get his children back. We've had several court hearings. We've had referrals for services for – for [Father] to reunify with the children. [Father] still hasn't complied. [Father] still hasn't completed the DNA testing. He didn't complete a psychological parenting assessment. He's not followed through with any of the court ordered services, and the department has concerns with – if [Father] can handle the stress of day-to-day parenting.

(*Id.* at 92.)

Father did not participate in services designed to improve his parenting skills and assist him in reunification with his children, he did not maintain stable employment and housing, and he did not visit his children for over six months. There is clear and convincing evidence that termination of Father's parental rights is in the children's best interests.

## **CONCLUSION**

The record supports the trial court's findings and its conclusions that the reasons for removal had not been remedied and termination was in the children's best interests. Those

conclusions support the court's decision to terminate Father's parental rights. Accordingly, we affirm.

Affirmed.

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