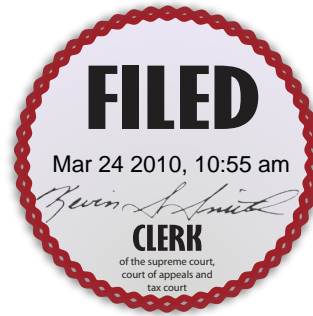


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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In Re the Matter of the Termination	)	
of the Parent Child Relationship	)	
of A.M.	)	
	)	
T.W.M.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 62A04-0911-JV-665
	)	
Perry County Department of Child Services.	)	
	)	
Appellee-Petitioner.	)	

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APPEAL FROM THE PERRY CIRCUIT COURT  
The Honorable Wayne A. Roell, Special Judge  
Cause No. 62C01-0712-JT-242

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**March 24, 2010**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**ROBB, Judge**

### Case Summary and Issue

T.M. (“Father”) appeals the juvenile court’s order terminating his parental rights with respect to A.M.<sup>1</sup> For our review, Father raises a single issue, whether sufficient evidence supports the termination of his parental rights. Concluding the evidence is sufficient, we affirm.

### Facts and Procedural History

A.M. was born to Father and N.M. (“Mother”)<sup>2</sup> on February 1, 2005. In late June 2005, Father was arrested and charged with domestic battery, and Mother was arrested on an outstanding warrant. Father’s mother initially took care of A.M., but brought A.M. to the Perry County Department of Child Services (“DCS”) for assistance. DCS took custody of A.M. on June 29, 2005, and filed a petition alleging A.M. was a child in need of services (“CHINS”) shortly thereafter. On September 20, 2005, the juvenile court terminated the CHINS proceedings and returned A.M. to Mother and Father, who were living in Kentucky at the time.

In October 2005, Kentucky child welfare officials contacted DCS to report Father had been arrested and charged with domestic assault, fleeing or evading police, criminal trespass,

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<sup>1</sup> Pursuant to Appellate Rule 9(J) and Administrative Rule 9(G)(1)(b)(vi), this court requires initials to be used in place of names for minors in TPR cases. Both Father and DCS neglectfully included A.M.’s name on multiple occasions in their respective briefs. Both parties are reminded to exercise more care in the future to protect the anonymity of children in TPR and similar proceedings.

and public intoxication. On March 21, 2006, Father, now living in Indiana again, was arrested and charged with domestic battery and resisting law enforcement, and Mother was arrested on an outstanding warrant. At the time of his arrest, Father admitted he had been using illegal drugs. DCS once again took custody of A.M. and reinstituted CHINS proceedings. A couple of days after DCS took custody of A.M., DCS tested a sample of A.M.'s hair, which came back positive for cocaine and marijuana. On March 23, 2006, the juvenile court issued a protective order barring Father and Mother from contact with A.M.

Father was released from jail on September 8, 2006, and the juvenile court modified its protective order to allow supervised visits between Father and A.M. The juvenile court also ordered Father to do the following: have regular supervised visits with A.M.; participate in parenting classes; undergo a drug and alcohol treatment evaluation and follow any recommendations therefrom; complete a batterer's intervention program; and submit to random drug testing. On April 2, 2007, after Mother had multiple positive tests for illegal drugs, the juvenile court ordered both Father and Mother to participate in a CHINS drug court program. Father, for the most part, cooperated with the juvenile court's orders. He attended at least one parenting class, passed all drug tests, completed the batterer's intervention program, and only missed a couple of supervised visits with A.M. As a result, the juvenile court authorized a trial home visit for A.M. to be returned to Father and Mother on October 2, 2007.

On October 20, 2007, the CHINS drug court ordered Father to spend a weekend in jail for misuse of prescription medication in violation of the drug court rules. On November 17,

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<sup>2</sup> Mother's parental rights were also terminated, but she is not a party to this appeal.

2007, Father was arrested and charged with domestic battery, and DCS again took custody of A.M. On December 6, 2007, DCS filed a petition to terminate parental rights (“TPR”) with respect to both Father and Mother. On December 18, 2007, Father was arrested and charged with driving while suspended.

In early February 2008, Father refused to take a drug test. On March 3, 2008, after Father had missed a couple of visits with A.M., the juvenile court ceased supervised visitation based upon a recommendation from one of A.M.’s therapists. On April 25, 2008, Father was arrested again and charged with domestic battery, indecent exposure, criminal confinement, and interfering with reporting a crime. The juvenile court held the TPR trial on May 26, 2009, and July 28, 2009. Father was incarcerated during the second trial date.

Prior to the trial, one of A.M.’s therapists sent a letter to DCS stating A.M. was displaying trauma symptoms due to witnessing domestic violence. The letter further stated A.M. talked often about witches, devils, and monsters, was having nightmares, and had a fear of sleeping alone. During the trial, another of A.M.’s therapists testified A.M.’s play during therapy sessions often focused on anger, instructing dolls or puppets to stop hurting A.M. In addition, A.M.’s therapist and her foster mother testified A.M. had made statements indicating Father had hit her or hurt her, and after Father’s visitations with A.M. stopped, A.M. said “daddy doesn’t hit anymore.” Transcript at 21. On September 23, 2009, the juvenile court issued its findings of fact and conclusions of law concluding sufficient evidence supported the termination of Father’s parental rights. Father now appeals.

## Discussion and Decision

### I. Standard of Review

When reviewing the sufficiency of the evidence to support a termination of parental rights where the juvenile court has entered findings of fact and conclusions thereon, we apply a two-tiered standard of review. In re G.Y., 904 N.E.2d 1257, 1260 (Ind. 2009). First, we determine whether the evidence supports the juvenile court's findings, and second, we determine whether the findings support the judgment. Id. In making this determination, we neither reweigh the evidence nor judge the credibility of witnesses, and we consider only the evidence and reasonable inferences most favorable to the judgment. Id. We will reverse a termination of parental rights only if the juvenile court's judgment is clearly erroneous. Id. A judgment is clearly erroneous if the findings do not support the juvenile court's conclusions or the conclusions do not support the judgment. Id.

### II. Termination of Parental Rights

The traditional right of a parent to establish a home and raise his child is protected by the Fourteenth Amendment to the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, parental rights are not absolute and must be subordinated to the best interests of the child in determining the proper disposition of a TPR petition. Id. In order to terminate Father's parental rights with respect to A.M., the juvenile court must find by clear and convincing evidence there is a reasonable probability either "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 "the continuation of the

parent-child relationship poses a threat to the well-being of the child,” but need not prove both. Ind. Code §§ 31-35-2-4(b)(2)(B), 31-37-14-2; In re L.S., 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), cert. denied, 534 U.S. 1161 (2002).

Here, the juvenile court concluded both “there is a reasonable probability that the conditions that brought about the removal will not be remedied and that continuation of the parent-child relationship poses a threat to the well-being of the child.” Appellant’s Appendix at 12. However, on appeal, we need only find sufficient evidence for one of the two prongs in order to affirm the juvenile court’s decision. See In re L.S., 717 N.E.2d at 209. In its order, the juvenile court found “both parents have demonstrated a history of drug and alcohol abuse and domestic violence.” Appellant’s App. at 11. Additionally, the juvenile court found, “Father has continually been involved in domestic altercations.” Id. The evidence in the record demonstrates Father was arrested and charged with domestic violence related crimes five times in the first three years of A.M.’s life, often resulting in his incarceration. Although Father made attempts at cooperating with court ordered services, ultimately, he continued his pattern of poor choices and criminal behavior right up to the TPR trial.

Father argues without any supporting evidence he has changed his life and will make better choices in the future. However, his habitual pattern of conduct belies that claim. In addition, to the extent Father argues there was some evidence before the juvenile court he could remain drug-free and crime-free after severing his relationship with Mother, his argument is a request for us to reweigh the evidence, which we will not do. In re G.Y., 904 N.E.2d at 1260. Therefore, sufficient evidence supports the juvenile court’s finding the

conditions resulting in A.M.'s removal from Father's care will not be remedied, and the order terminating Father's parental rights is affirmed.<sup>3</sup>

### Conclusion

Sufficient evidence supports the juvenile court's order terminating Father's parental rights with respect to A.M., and the order is affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.

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<sup>3</sup> Although we need not address the sufficiency of the evidence that continuation of the parent-child relationship poses a threat to A.M., we point out the juvenile court heard considerable testimony from A.M.'s therapists indicating her belief Father did pose a threat to A.M.'s physical and emotional health.