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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 )  
T.M., and )

B.S. , (FATHER) )

Appellant-Respondent, )

vs. )

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )

Appellee-Petitioner. )

No. 71A04-1002-JT-81

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Peter J. Nemeth, Judge  
The Honorable Barbara J. Johnston, Magistrate  
Cause No. 71J01-0903-JT-52

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**May 21, 2010**

## **MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

### **Case Summary**

B.S. (“Father”) appeals the involuntary termination of his parental rights to his child, T.M. Concluding that the Indiana Department of Child Services, St. Joseph County (“DCS”), presented clear and convincing evidence to support the trial court’s judgment, we affirm.

### **Facts and Procedural History**

Father is the biological father of T.M., born on November 25, 2007. The evidence most favorable to the trial court’s judgment reveals that in May 2008 DCS received a report that T.M.’s biological mother and sole legal guardian, K.M. (“Mother”), had recently been incarcerated and that Mother’s relatives could no longer care for T.M.<sup>1</sup> DCS took T.M. into protective custody and placed him in a foster care home where his two older step-brothers already resided. Father and Mother were never married, and, at the time of T.M.’s removal, Father was married to another woman, D.S.

DCS filed a petition alleging T.M. was a child in need of services (“CHINS”), and Father admitted to the allegations contained therein during an evidentiary hearing in July 2008. The trial court thereafter adjudicated T.M. a CHINS.

On August 13, 2008, the trial court entered a dispositional order formally removing T.M. from Father’s care. The trial court’s dispositional order also directed

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<sup>1</sup> The trial court terminated Mother’s parental rights to T.M. in August 2009. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent solely to Father’s appeal.

Father to participate in a variety of services in order to achieve reunification with T.M. Father was ordered to, among other things, (1) visit with T.M. on a regular basis, (2) cooperate with home-based services, (3) maintain stable employment and housing, (4) remain drug-free, and (5) maintain consistent contact with DCS and notify DCS in writing of any change in address or phone number within forty-eight hours.

Father initially engaged in court-ordered services by participating in supervised visits with T.M. shortly after the child's removal. Visits took place in the family home, which was owned by his wife before their marriage, along with D.S. and the couple's baby, A.S. After only two months, however, D.S. contacted DCS family case manager James Bayer to inform him that she had asked Father to move out of the house due to increased marital turmoil resulting from Father's alleged use of illegal drugs and domestic violence. Service providers confirmed that Father was no longer living in the family home, and Father's in-home visitation privileges were temporarily suspended. Father neither sought alternative visitation arrangements nor provided DCS with a new address.

In October 2008 Bayer referred Father to Family and Children's Center Counseling Development Services for a substance abuse evaluation. Father declined to participate in the referral, however, because the receptionist was an acquaintance of his mother. For the following several months, Father ceased all communications with DCS and did not participate in any services.

In mid-January 2009 Father contacted Bayer and expressed a desire to reengage in services. Bayer referred Father to the Quiet Care program at Madison Center for

substance abuse evaluation and treatment. Bayer also informed Father that once he began participating in services, his visitation privileges with T.M. would likely be reinstated. Father submitted to an initial assessment at Madison Center, but he disagreed with the results of his evaluation and declined to participate in the recommended intensive outpatient drug treatment program. In March 2009 Father, on his own initiative, enrolled in a residential drug treatment program with the Salvation Army in Fort Wayne. Father did not, however, complete the program. In addition, Father remained unemployed, did not have stable housing, was not visiting with T.M., and failed to maintain contact with DCS.

DCS filed a petition seeking the involuntary termination of Father's parental rights to T.M. in August 2009. An evidentiary hearing on the termination petition was held on November 13, 2009. During the termination hearing, Father indicated that he had worked on various odd jobs during the past year, but that he had nevertheless remained unemployed and without stable housing. Father also acknowledged that he had not visited with two-year-old T.M. for more than one and a half years. In addition, although Father claimed that he had been sober for nine months, he also admitted that he had used various drugs, including marijuana and cocaine, from the time he was eleven years old, and that he had not completed any substance abuse treatment program since T.M.'s removal from his care.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On November 20, 2009, the trial court issued its judgment terminating Father's parental rights to T.M. This appeal ensued.

## Discussion and Decision

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). When reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id.* Moreover, in deference to the trial court's unique position to assess the evidence, we will set aside the court's 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*. If the evidence and inferences support the trial court's decision, we must affirm. *Id.*

"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*. A trial court must subordinate the interests of the parent to those of the child, however, when evaluating the circumstances surrounding a termination. *K.S.*, 750 N.E.2d at 837. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. *Id.* at 836.

When seeking an involuntary termination of parental rights, the State is required to allege and prove, among other things, that:

- (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 . . . .

Ind. Code § 31-35-2-4(b)(2)(B). If the trial court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. *See* Ind. Code § 31-35-2-8.

Father's sole allegation on appeal is that DCS failed to establish, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in T.M.'s continued placement outside of his care will not be remedied or continuation of the parent-child relationship poses a threat to T.M.'s well-being. *See* I.C. § 31-35-2-4(b)(2)(B). In making this argument, Father points out he "made some efforts in complying with the case plan" by establishing paternity of T.M., exercising visitation for a period of time, attending a drug abuse assessment, and allegedly establishing a stable home and employment. Appellant's Br. p. 17. Father therefore contends there is insufficient evidence supporting the trial court's judgment and he is entitled to reversal.

We first observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. The trial court was therefore required to find only one of the two requirements of subsection 2(B) had been met before issuing an order to terminate Father's parental rights. *See In re L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Nevertheless, the trial court found both prongs of this statute had been satisfied. *See* I.C.

§ 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it to be dispositive, we only address subsection 2(B)(i).

In determining whether there exists a reasonable probability that the conditions resulting in a child's removal or continued placement outside a parent's care will not be remedied, a trial court must judge a parent's fitness to care for his or her child 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*. The court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *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 County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. A trial court may also properly consider the services offered to the parent by a county department of child services and the parent's response to those services as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county department of child services is not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In terminating Father's parental rights to T.M., the trial court made the following pertinent findings:

[T]he reasons for placement outside the home of the parents will not [be] remedied. The child was detained because no one was found who could provide for him. Father has done nothing to secure that [T.M.] could be placed with him. Father has not seen this child since August of 2008, due to his failure to maintain contact with [DCS]. [Father] has not remained drug free; he has never even completed any drug treatment program. Father believes that the fact that he is biologically [T.M.'s] father automatically entitles [Father] to raise his child. The Court acknowledges the parental rights vested within biological parents. However, as case law clearly holds, those rights shall not be put on hold while the clock ticks and a child's life hangs in the balance. Permanency for [T.M.], after remaining in foster care since May 22, 2008, will serve this young child's best interest[s].

Appellant's App. p. 9-10. A thorough review of the record leaves us convinced that clear and convincing evidence supports the trial court's findings set forth above. These findings, in turn, support the trial court's ultimate decision to terminate Father's parental rights to T.M.

Although T.M. was initially removed from Mother due to Mother's incarceration, DCS was unable to place T.M. with Father due to Father's lack of a relationship and/or contact with T.M. T.M.'s continued placement outside of Father's care was the direct result of Father's refusal to maintain contact with DCS and to successfully complete court-ordered services. At the time of the termination hearing, these conditions remained unchanged.

In recommending termination of Father's parental rights, DCS family case manager Bayer informed the trial court that although his first impression was that Father "seemed fairly cooperative" and that he thought Father "would participate in services," Father never did. Tr. p. 39. Bayer further confirmed that Father contacted him only three or four times throughout the duration of the underlying proceedings, never completed



substance abuse treatment, and had participated in only two months of supervised visits with T.M. at the beginning of the CHINS case. Bayer went on to testify that Father “seemed more focused on when [Mother’s] rights were going to be terminated as opposed to what [Father] needed to do in the case.” *Id.* at 49.

Similarly, the court-appointed special advocate, Brian Gates, testified that he was “very impressed” with Father at their first meeting because Father was “insistent” that T.M. belonged with him, and that Father intended to regain custody of T.M. and provide T.M. with a good home. *Id.* at 76. In recommending termination of Father’s parental rights, however, Gates informed the court that for the past one and a half years, Father had been unable to demonstrate he is capable of providing T.M. with a “stable, healthy environment.” *Id.* at 85.

Father’s own testimony provides additional support for the trial court’s findings. Father admitted during the termination hearing that he (1) was unemployed, (2) did not have a valid driver’s license, (3) was no longer living with D.S. and did not have a permanent address, and (4) had not visited with T.M. since August 2008. With regard to his illegal drug use, although Father informed the court that he had not used any illegal substances for nine months, Father nevertheless admitted he began smoking marijuana at age eleven, was a daily smoker by the time he was in high school, became addicted to cocaine while in the Army during his twenties, and had experimented with heroin. In addition, Father confirmed that he had refused to participate in the treatment programs referred by DCS, and that he ceased participating in the six-month residential program with the Salvation Army that he began on his own initiative after only six weeks.

As previously explained, 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 the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *D.D.*, 804 N.E.2d at 266. At the time of the termination hearing, Father had been unable to demonstrate an ability or willingness to provide T.M. with a consistently safe and stable home environment, despite a wealth of services available to him, for over one and a half years. Moreover, Father's absolute failure in maintaining any sort of relationship with T.M. throughout the duration of the underlying proceedings suggests a lack of commitment on Father's part to complete the actions necessary to preserve his parental relationship with T.M. *See, e.g., Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (stating that failure to visit one's child "demonstrates a lack of commitment to complete the actions necessary to preserve [the] parent-child relationship"), *trans. denied*.

Based on the foregoing, we conclude that ample evidence supports the trial court's determination that there is a reasonable probability the conditions resulting in T.M.'s removal from Father's care will not be remedied. Where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). 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

*Egley v. Blackford County Dep't of Public Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992)).

We find no such error here.

Affirmed.

NAJAM, J., and BROWN, J., concur.