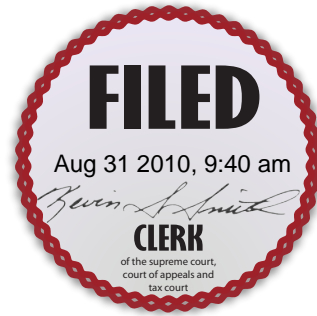


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE TERMINATION OF THE )  
PARENT-CHILD RELATIONSHIP OF L.R., )  
Minor Child, and A.W., Father )  
 )  
A.W., )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
INDIANA DEPARTMENT OF CHILD )  
SERVICES, )  
 )  
Appellee-Petitioner. )

No. 32A01-1002-JT-53

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APPEAL FROM THE HENDRICKS CIRCUIT COURT  
The Honorable J.V. Boles, Judge  
Cause No. 32C01-0812-JT-270

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**August 31, 2010**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, A.W. (Father), appeals the trial court's Order terminating his parental rights to his minor child, L.R.

We affirm.

## ISSUES

Father raises two issues for our review, which we restate as follows:

- (1) Whether Father was deprived of due process of law; and
- (2) Whether the evidence was sufficient to support the termination of Father's parental rights.

## FACTS AND PROCEDURAL HISTORY

Father and M.R. (Mother) are the biological parents of L.R., who was born on June 16, 2006. L.R. lived with Mother and his two-year-old half brother, R.R. On July 28, 2006, the Indiana Department of Child Services, Division of Hendricks County (DCS), was called to Mother's home by a home detention officer concerned about the safety of L.R. and R.R. R.R. had been found in the street unsupervised, the condition of the home was poor, L.R. was inappropriately dressed and Mother's mental health appeared to be impaired. On July 28, 2006, DCS filed a petition alleging L.R. to be a Child in Need of Services (CHINS).<sup>1</sup> It was at this time that Mother noted in the CHINS petition the identity of Father as the father of L.R. and claimed that paternity had been established. Mother did not provide Father's contact information.

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<sup>1</sup> The petition also alleged R.R. to be a CHINS; however, this appeal only concerns L.R.

Over the next two years, Mother was provided with services and for a brief period of time, L.R. was returned to Mother's care. Nevertheless, at a hearing on October 31, 2008, DCS accounted that due to Mother's lack of cooperation with services provided, the DCS decided to change L.R.'s permanency plan from reunification to adoption. At that hearing, Mother informed the trial court that Father was incarcerated in Kentucky. DCS contacted Father and assisted him in establishing paternity of L.R. Father was present by telephone at Mother's initial termination hearing on April 21, 2009, where the trial court read Mother's termination petition to him and informed him that the second family case manager in the case would contact him about establishing paternity. Father also informed the trial court that his earliest date of release was in early 2010. On September 1, 2009, paternity was established. Ultimately, Mother voluntarily terminated her parental rights to L.R.

On December 17, 2009, a fact-finding hearing was held on terminating Father's parental rights. On December 23, 2009, the trial court issued its findings of fact and conclusions of law, stating:

1. [Father] is the non-marital father of minor child, [L.R.], date of birth 16 June[,] 2006, by a mother whose paternal rights have been previously terminated on 21 April, 2009.
2. [Father] is currently serving a jail sentence in the Kentucky court system involving drug charges, his outdate is 17 May 2011, with a possible parole in January 2010.
3. [L.R.] was removed from the terminated mother six weeks after his birth when [L.R.'s] half[-]brother, [R.R.], had been found running unsupervised in the street.

4. [Father's] paternity of [L.R.] was established by [O]rder of 2 September 2009, on a Petition to Terminate filed in December 2008, and therefore, [L.R.] has been a ward of the State for three and [a] half years.

5. [Father], although aware that he was possibly the father of [L.R.] early on, has failed to take any action (other than submitting an establishment of paternity) to contact the guardian ad litem appointed in this case, contact [L.R.], contact anyone, or pay any support, or make any step toward assuming responsibilities of a normal father in this case.

6. The [g]uardian [a]d [l]item in this case forcefully recommends termination of [Father's] paternal rights because [L.R.] and his half-brother [R.R.] have been together since the boys were removed from the terminated mother's home and have no other family connections.

7. The [DCS] and the [g]uardian [a]d [l]item have recommended to the [c]ourt that both [L.R.] and [R.R.] be adopted together for the purposes of stability of the children.

8. [Father's] charges in Kentucky questioned his ability to parent a child. [Father] occasionally attends [Alcoholics Anonymous] and [Narcotics Anonymous] classes and has not taken parenting classes while in jail, but [Father] works every day on the outside as a community custody level worker. [Father] has been denied parole one time in the past by the Kentucky criminal legal system.

9. [Father] knew that he was a possible father of [L.R.] since [L.R.'s] birth.

(Appellant's App. pp. 197-99).

The trial court also made the following conclusions of law:

2. A trial court need not wait until the child is irreversibly influenced such that his or her physical, mental or social growth is permanently impaired before terminating the parent-child relationship. []

3. A mother's initial efforts to hamper the father's contact with the child do not excuse (the father's) failure to try to contact the child even once during the three years a child is in foster care. []

(Appellant's App. p. 199). Relying on these findings and conclusions, the trial court terminated Father's parental rights.

Father now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Procedural Due Process*

Father argues that procedural irregularities in the CHINS proceeding resulted in his constitutional due process rights being violated in the termination proceedings. Specifically, he contends that: “(a) no notice was given for fifteen of the sixteen hearings held; (b) the decree contained no findings or conclusions related to [Father]; (c) no service was made on seven of the eight case plans; and (d) reasonable efforts were not made to reunite and preserve the family.” (Appellant's Br. p. 6).

We initially note that a party on appeal may waive a constitutional claim. *Hite v. Vanderburgh County Office of Family & Children*, 845 N.E.2d 175, 180 (Ind. Ct. App. 2006). Generally, a party waives a claim when it is raised for the first time on appeal. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 195 n.4 (Ind. Ct. App. 2003) (holding that “[t]o preserve her constitutional claim for appeal, [mother] could and should have raised her due process argument during the termination proceedings”).

As noted above, Father raises a number of perceived procedural irregularities that occurred during the underlying CHINS proceeding.<sup>2</sup> However, Father failed to object or argue at the termination hearing that such irregularities violated his due process rights. Because Father failed to object to the alleged due process violations in a timely manner and has raised these issues for the first time on appeal, he has waived the issue. *McBride*, 798 N.E.2d at 194-95. Waiver notwithstanding, because of the importance of the issues before us, we will address the merits of Father’s argument.

We observe that the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that “no person shall be deprived of life, liberty, or property without due process of the law.” U.S. CONST. Amend. XIV. It is well-settled that the State must satisfy the requirements of the Due Process Clause when it seeks to terminate a parent-child relationship. *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*. We have held that “[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Thompson v. Clark County Div. of Family & Children*, 791 N.E.2d 792, 795 (Ind. Ct. App. 2003) *trans. denied* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976)). Due process in parental rights cases involves the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen

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<sup>2</sup> The State argues that “Appellant’s Appendix is replete with documents never entered into evidence in the termination hearing.” (Appellee’s Br. p. 14). We agree with the State and will only use evidence that was presented before the trial court during the termination hearing. *See Washburn v. State*, 868 N.E.2d 594, 598 n. 1 (Ind.Ct.App.2007), *trans. denied* (“As we may consider only evidence that has been introduced and properly admitted by the trial court, we will ignore all references” to material not before the trial court).

procedure; and (3) the countervailing government interest supporting use of the challenged procedure. *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1112 (Ind. Ct. App. 2000), *reh'g denied, trans. denied*.

In termination cases, both the private interests of the parent and the countervailing governmental interests that are affected by the proceedings are substantial. In particular, this termination action concerns Father's interest in the care, custody and control of his child, which has been repeatedly recognized as one of the most valued relationships in our society. *In re A.B.*, 922 N.E.2d 740, 744 (Ind. Ct. App. 2010). As such, Father's interest in accuracy and fairness of the termination hearing is "a commanding one." *Id.* (citing *In re E.D.*, 902 N.E.2d 316, 321 (Ind. Ct. App. 2009), *trans. denied*). The government's countervailing interest is also substantial. The State of Indiana has a compelling interest in protecting the welfare of the children. *In the Matter of E.M.*, 581 N.E.2d 948, 952 (Ind. Ct. App. 1991), *trans. denied*.

Turning to the factor regarding the risk of error, Father argues that procedural irregularities in the CHINS proceedings deprived him of procedural due process rights in the termination proceedings. Specifically, Father contends that DCS failed to provide him with notice of the CHINS proceedings and case plans and what he needed to do in order to gain custody of L.R.

Father relies on our holding in *A.P.* that "procedural irregularities in a CHINS proceedings may be of such import that they deprive a parent of procedural due process with respect to the termination of his or her parental rights." *A.P.*, 734 N.E.2d at 1113. In that

case, we reasoned that the CHINS and involuntary termination statutes are not independent of each other; in fact Indiana Code section 31-35-2-2 clearly states that an involuntary termination proceeding is “governed by the procedures prescribed by” the CHINS statutes contained in Indiana Code Article 31-34. *Id.* at 1112. However, we also found that although the CHINS statutes govern termination proceedings, I.C. § 31-35-2-2 clearly states that termination proceedings are distinct from CHINS proceedings. *Id.* Additionally, we stated that:

Our supreme court has concluded that CHINS proceedings are “distinct from” involuntary termination proceedings in that a CHINS cause of action is separate from and does not necessarily lead to a termination cause of action. Moreover, a CHINS intervention in no way challenges the general competency of a parent to continue a relationship with his or her child, and a termination proceeding is thus of “much greater magnitude as to the rights of the parties involved.” Also, an involuntary termination of parental rights can occur only after a child has been removed from his or her parent for six months under a CHINS (or juvenile delinquency) dispositional decree, or after a court has made an express determination that reasonable efforts for family preservation or reunification are not required pursuant to Indiana Code Section 31-34-21-5.6, or after the child has been removed from his or her parent for at least fifteen of the most recent twenty-two months. I.C. § 31-35-2-4.

*Id.* (Internal citations omitted).

Therefore, although termination and CHINS proceedings have an interlocking statutory scheme because involuntary termination proceedings are governed by the CHINS statutory procedures, CHINS proceedings are separate and distinct from involuntary termination proceedings because a CHINS cause of action does not necessarily lead to an involuntary termination cause of action. *In re T.F.*, 743 N.E.2d 766, 771 (Ind. Ct. App. 2001), *trans. denied*. However, in order for an involuntary termination determination to be



made, it is necessary that the statutory CHINS procedures have been properly followed. *Id.*

Thus, in *A.P.* we held that:

Those three alternative prerequisites to involuntary parental rights termination can only be met through compliance with the CHINS or juvenile delinquency statutes . . . . It would be incongruous to hold that a county, with the assistance of a juvenile court, may commence CHINS proceedings for a child and remove a child from his or her home, yet disregard various portions of the CHINS and termination statutes on *several occasions* and still terminate parental rights following the passage of time after a CHINS dispositional decree and a child's removal from the home.

*A.P.*, 734 N.E.2d at 1112-13 (emphasis added).

Father argues that once the DCS was made aware that he was the potential father of L.R., as listed by Mother in the petition alleging CHINS on August 17, 2006, the DCS never took the steps necessary to locate him, assist him with establishing paternity, offer him with services, and provide him with notice of the CHINS determination. Indiana Code section 31-34-10-2 provides that:

- (a) The juvenile court shall hold an initial hearing on each petition.
- (b) The juvenile court shall set a time for the initial hearing. A summons shall be issued for the following:
  - (1) The child.
  - (2) The child's parent, guardian, custodian, guardian ad litem, or court appointed special advocate.
  - (3) Any other person necessary for the proceedings.
- (c) A copy of the petition must accompany each summons. The clerk shall issue the summons under Rule 4 of the Indiana Rules of Trial Procedure.

In response to Father's claims, the DCS counters that the "DCS took custody of [L.R.] in July 2006 and did not identify the Father until October 31, 2008." (Appellant's Br. p. 15). We find this argument to be disingenuous and a mischaracterization of the evidence. Despite

DCS's claim that it was unable to locate Father, the DCS was in fact made aware of the identity of Father early on in the case. During Mother's initial voluntary termination hearing, the guardian ad litem (GAL) stated, "From the very beginning of this case [Mother] has said [Father] has been the father of [L.R.] . . . ." (Transcript p. 141).

Nevertheless, throughout the proceedings, particularly during a review hearing on November 20, 2007, the family case manager claimed that DCS did not know the identity of L.R.'s father. Additionally, in several of the case plans, the father of L.R. was listed as unknown. It was not until October 31, 2008, during a review hearing where the DCS requested that the permanency plan change from reunification to adoption, that the family case worker asked Mother where Father could be located. As demonstrated in the record, DCS knew Father's name from the very beginning, yet sat idly by and did not take any steps to locate and notify him of the CHINS hearings.

However, in spite of DCS's carelessness in locating Father, we cannot say that the failure to provide Father with notice during the initial stages of the CHINS action and with case plans substantially increased the risk of error in the termination proceedings. It is clear that Father was not denied the opportunity to be heard in the termination hearing. Although Father was incarcerated at the time that the DCS informed him that he was likely the father of L.R. in October 2008, Father testified that he knew he was likely the father of L.R. before that date. But, according to the record, Father did not take the steps necessary to legally establish paternity until September 2, 2009—nearly a year after he was contacted by DCS. Additionally, the family case worker testified that she assisted Father by completing his

application for paternity for him. Thus, it appears that even though Father was not notified of the CHINS proceedings, he had ample opportunity to become involved in the case, particularly when the DCS notified him in October 2008. Thus, we conclude that the risk of error in this case is not substantial, as Father was provided with notice, the opportunity to be heard, and was represented by counsel.

## II. *Sufficiency of Evidence*

Next, Father contends that the DCS did not establish by clear and convincing evidence that the conditions that resulted in L.R.'s removal or the reasons for placement will not be remedied or that continuation of the parent-child relationship posed a threat to L.R.'s well-being or that it was in L.R.'s best interest.

### A. *Standard of Review*

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.* Where, as here, the trial court entered findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence

supports the findings, and second we determine whether the findings support the judgment. *Id.*

### B. Analysis

The Fourteenth Amendment of the United States Constitution protects the traditional right of parents to establish a home and raise their children. *Bester*, 839 N.E.2d at 147. Our supreme court has acknowledged that the parent-child relationship is “one of the most valued relationships in our culture.” *Id.* (quoting *Neal v. DeKalb County Div. of Family and Children*, 796 N.E.2d 280, 285 (Ind. 2003)). That being said, parental interests are not absolute and must be subordinated to the child’s interest in determining the proper disposition of a petition to terminate parental rights. *Id.*

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing that:

(B) there is reasonable probability that:

(i) the condition 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.

I.C. § 31-35-2-4(b)(2). In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial

court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual patterns of conduct must also be evaluated to determine the probability of future negative behavior. *Id.* The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. *Id.*

### 1. *Conditions Resulting in Removal*

Father argues that the DCS did not establish by clear and convincing evidence that the conditions that resulted in L.R.'s removal or the reasons for placement will not be remedied or that continuation of the parent-child relationship posed a threat to L.R.'s well-being. We note that because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find one to the two elements by clear and convincing evidence. *Castro*, 842 N.E.2d at 373.

Here, the trial court stated the following:

[Father] has been given considerable opportunities, has knowledge of the status of his minor non-marital child, and did nothing that would indicate to the court that there is any reasonable probability that [Father] will remedy the conditions that cause[d] [L,R.] to be placed outside of the home of [Father]. [L.R.'s] continued parent child relationship with [Father] poses a threat to the well being of [L.R.] [].

(Appellant's App. pp. 199-200). Thus, we need only find that the DCS established by clear and convincing evidence either subsection (b)(2)(B)(i) or (ii).

Father argues that in finding that there was a reasonable probability that the conditions resulting in L.R.'s removal will not be remedied, the trial court ignored his testimony that he

had a plan to gain custody of L.R. as soon as he is released from prison. Taking into consideration Father's fitness to care for L.R. at the time of the termination hearing, the record establishes that Father has been incarcerated for L.R.'s entire life, or at least as long as L.R. has been in foster care. Despite the fact that Father was up for parole in January 2010, he was denied parole once before in October 2008.<sup>3</sup> His release date is set for May 2011—nearly two years from the termination hearing, leaving L.R. to wait in limbo for another two years of his life. Father suggests that the trial court should have afforded him the opportunity to prove himself upon being released from incarceration, and directs our attention to *In re J.M.*, 908 N.E.2d 191 (Ind. 2009). In that case, our supreme court held that involuntary termination of parental rights of incarcerated parents was not warranted where the incarcerated parents were scheduled for release soon and the parents' "ability to establish a stable and appropriate life upon release can be observed and determined within a relatively quick period of time." *Id.* at 196. However, our supreme court noted that even though it was the second case recently decided by that court holding that involuntary termination of parental rights of incarcerated parents was not warranted, "the close proximity [of the two cases is] coincidence and not a reflection of any presumption as to the outcome of such cases." *See R.Y. v. Ind. Dep't of Child Servs.*, 904 N.E.2d 1257, 1262 (Ind. 2009).<sup>4</sup>

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<sup>3</sup> Father filed his appeal on January 15, 2010 and amended the appeal on January 27, 2010. Based on the record, we are unable to determine whether Father was in fact granted parole in January of 2010.

<sup>4</sup> Westlaw refers to the opinion as "*In re G.Y.*" using the minor child's initials as the basis for the case name, but our supreme court has referred to the opinion as "*R.Y. v. Ind. Dep't of Child Servs.*" utilizing the initials of the mother whose parental rights were at stake in the litigation.

We find *J.M.* to be distinguishable from the circumstances here. In *J.M.*, both parents had an “ongoing relationship with [the child] during the first three years of his life and there were no allegations that during this period of time they were unfit parents in any way.” *Id.* at 192. Additionally, both the mother and father had taken steps to provide permanency for their child upon their release from prison—father had a job waiting for him upon his release and he also had secured a home where they could live, and mother was on track to complete her college degree. *Id.* at 194-95. Here, Father has not created a relationship or bond with L.R. despite being aware from the outset that he likely was L.R.’s father. Once paternity was established, Father still had not made any attempts to contact L.R. or attend parenting classes offered by the jail to help prepare him to be a parent for L.R. While Father testified that he planned on getting a job and living with family upon his release, L.R. has been in the foster care system for his entire life and would have to wait until Father’s release in May 2011 before there is any sort of stability in L.R.’s life. Even if L.R. and Father were to live with Father’s family until Father is able to get a stable job and housing arranged, L.R. would be living in yet another temporary housing situation until Father can provide a permanent life. Thus, we find that the DCS established by clear and convincing evidence that the conditions that resulted in L.R.’s removal will not be remedied.

## 2. *Best Interest of L.R.*

Finally, Father contends that the trial court erred by finding that termination was in L.R.’s best interest. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the DCS and look to

the totality of the evidence. *McBride*, 798 N.E.2d at 203. In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is 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).

First, Father directs us to the trial court's finding that he failed to make contact with L.R. after he was born as misleading, because Father states that he was unable to locate Mother and had "no opportunity to reach out to [L.R.]." (Appellant's Br. p. 24). Despite Father's argument, Father was on notice from the outset that he likely fathered a child with Mother and could have reached out to her before L.R. became a part of the foster care system rather than waiting for Mother to contact him. Even if Mother hampered Father's initial contact with L.R., more significant is the fact that once the DCS contacted him in October 2008, Father failed to take any affirmative steps to contact L.R., such as contacting L.R.'s GAL or asking the family case manager, who filled out Father's paternity application for him, for assistance and what was needed of him to locate and contact L.R. Moreover, it took Father nearly a year from the time DCS initially contacted him to legally establish paternity.<sup>5</sup>

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<sup>5</sup> We note that the trial court's finding no. 5 with respect to Father's failure to pay child support is misleading and clearly erroneous, as Father was not ordered to pay child support until after his release.



Second, Father argues that his parental interest in raising L.R. is paramount to the trial court's finding that it is in the best interest of L.R. to be adopted with his half brother R.R. The trial court made the following findings:

6. The [g]uardian [a]d [l]item in this case forcefully recommends termination of [Father's] paternal rights because [L.R.] and his half-brother [R.R.] have been together since the boys were removed from the terminated mother's home and have no other family connections.

7. The [DCS] and the [g]uardian [a]d [l]item have recommended to the [c]ourt that both [L.R.] and [R.R.] be adopted together for the purposes of stability of the children.

(Appellant's App. p. 198). The family case manager testified that it is in L.R.'s best interest to remain with R.R. She stated, "I believe it would be detrimental to [L.R.'s] emotional and mental health if he would be separated from his brother as they do not have the same father." (Tr. p. 214). Additionally, she found that in the interest of permanency and stability, L.R. and R.R. should be placed in a pre-adoptive home as soon as possible, as they have been living in a state of limbo for almost four years. The GAL also testified that "[L.R.] along with his brother [R.R.] [] be placed in a pre-adoptive [] home so that they both can have permanency together. They, they are the only thing they have of each other." (Tr. p. 235). The GAL went on to state that even if Father was released on parole in January 2010, "it would take a considerable amount of time for him to do the appropriate services to even be considered [] an adequate placement." (Tr. p. 235).

We find that although Father may have established that he has a desire to be united with L.R., the caseworker's and the GAL's testimony support the trial court's findings that

termination of Father's parental rights is in L.R.'s best interests. *See McBride*, 798 N.E.2d at 203. These recommendations are not only focused on L.R. and R.R.'s bond with each other, which Father views as trumping his potential relationship with L.R., but also on the fact that Father failed to take affirmative steps to become legally adjudicated as L.R.'s father until a year after he was notified by DCS. Additionally, the family case manager testified that it would take Father too long to do the services required to be considered an adequate placement. These recommendations by the family case worker and the GAL are sufficient to support the trial court's determination that termination of Father's parental rights is in L.R.'s best interest.

Finally, Father argues that he was not offered services by DCS. On this we note that the law concerning termination of parental rights does not require DCS to offer services to parents to correct their deficiencies in childcare. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Rather, although a participation plan serves as a useful tool in assisting parents in meeting their obligations, and even though DCS routinely offers services to parents in regaining custody of their children, termination of parental rights may occur independent of them so long as the elements of Indiana Code section 34-35-2-4 are proven by clear and convincing evidence. *Id.* Therefore, a parent may not sit idly by without asserting a need or desire for services and then successfully argue he was denied services to assist him with his

parenting. *Id.* Thus, we affirm the trial court's determination that the DCS presented clear and convincing evidence that termination is in L.R.'s best interest.

### CONCLUSION

Based on the foregoing, we conclude that Father was not deprived of due process of the law and the evidence was sufficient to support the termination of Father's parental rights.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.