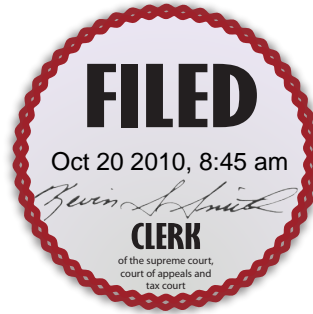


**Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF A.A. and D.R., )  
MINOR CHILDREN, AND THEIR MOTHER, )  
C.A.; AND OF A.A., MINOR CHILD, AND HER )  
FATHER, J.H. )

C.A., )  
 )  
Appellant/Respondent, and )

J.H., )  
 )  
Appellant/Respondent, )

vs. )

INDIANA DEPARTMENT OF CHILD )  
SERVICES, )  
 )  
Appellee/Petitioner. )

No. 48A02-1003-JT-317

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable G. George Pancol, Judge  
Cause Nos. 48D02-0909-JT-485, 48D02-0909-JT-486

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**October 20, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellants/Respondents C.A. (“Mother”) and J.H. (“Father”) appeal the juvenile court’s termination of the parent-child relationship with their daughter A.A. Mother also appeals the termination of the parent-child relationship with her son, D.R.<sup>1</sup> Both parents allege that the Indiana Department of Child Services (“DCS”) did not provide sufficient evidence to support the termination of their parental rights. Father also argues that his due process rights were violated. Concluding that the evidence was sufficient to support the termination of both parents’ parental rights and that Father’s due process rights were not violated, we affirm.

**FACTS AND PROCEDURAL HISTORY**

In April 2007, DCS received a report alleging that Mother was abusing or neglecting four-year-old A.A. and one-year-old D.R. because Mother’s home had no food or utilities. Exhibit 35. The children were often sleeping in a car with their mother. Ex. 35. Father’s whereabouts were unknown. Ex. 32. After Mother was arrested on two outstanding

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<sup>1</sup> D.R.’s father voluntarily relinquished his parental rights during the termination proceeding and is not a party to this appeal. Tr. 15.

warrants, DSC removed the children from her and placed them with her aunt, L.M. Ex. 35. That same month, DCS filed a petition alleging that both children were Children in Need of Services (CHINS). DCS notified Father of the petition by service by publication after unsuccessfully attempting to locate him. Ex. 34. At the initial hearing, Mother admitted the allegations in the petition, and Father did not appear. CCS 2. Neither parent attended the dispositional hearing where both children were adjudicated to be CHINS. Mother's App. 38. In the dispositional order, the juvenile court ordered Mother to report her address to DCS. Ex. 25. The court also ordered mother to participate in home-based services, submit to random urine drug screens, and to schedule an appointment at the Center for Mental Health. Ex. 25. DSC attempted to locate Father but was unable to do so. Ex. 23. The court ordered the two children to remain with L.M. Ex. 25.

The juvenile court held a review hearing in December 2007. Ex. 23. Neither parent appeared, and Mother had not followed previous court orders. Ex. 23. The court ordered Mother to 1) maintain stable employment; 2) participate in home-based services; 3) visit regularly with children; 4) attend individual counseling; 5) contact her DCS case manager weekly; and 6) comply with the parental participation agreement. Ex. 23. When Mother again failed to comply with the court's order, DCS filed a motion to terminate both parents' parental rights in February 2008. Ex. 18. Shortly thereafter, Mother began to comply with the services, and DCS filed a motion to dismiss the termination petition, which the juvenile court granted. Tr. 114. Within a few months, however, Mother again stopped complying with the court's order. In September 2009, DCS reinstated termination proceedings against

both parents. App. 44.

Testimony at the October 2009, January 2010, and February 2010 termination hearings revealed Mother did not have stable housing with utilities or employment. Tr. 117. She had not consistently visited her children, and suffered from anxiety and depression. Tr. 35-36, 69. In July 2009, she gave birth to a baby that was also removed from her care. Tr. 109. DCS Case Worker Amanda Capes testified she had spoken with Mother before the termination hearing, and Mother told her “she knew that . . . she was not going to be able to do the things that we’ve asked her to do” and did not intend to follow through with the DCS goals. Tr. 117. Capes further testified that Mother typically “would do something and then she would drop off and then she would do something and then she would drop off and then she would do something and then she would drop off.” Tr. 149.

The evidence regarding Father revealed A.A. accused him of inappropriately touching her in 2005. Tr. 204. Father subsequently moved out of state. Tr. 204. A 2007 DNA test revealed he is A.A.’s biological father, but he never established paternity. Tr. 204. When Father returned to Indiana in 2008 and asked for visitation with A.A., the juvenile court advised him to contact the Anderson Police Department regarding the molestation investigation. Tr. 130. Father eventually resumed visitation with A.A. in 2009. A.A. does not like the visitation. Tr. 43. She is afraid of Father and does not like the smell of his cigarettes. Tr. 80. She frequently wets the bed after visits. Tr. 80. At the time of the hearing, Father was unemployed and lived with his mother. Tr. 205. He has three additional children that he does not regularly support. Tr. 207.

Following the hearing, the juvenile court issued an order terminating the parental rights of both parents. Mother and Father both appeal.

## **DISCUSSION AND DECISION**

The purpose of terminating parental rights is not to punish parents but to protect their children. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parties are unable or unwilling to meet their responsibility as parents. *Id.*

The juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied*. Termination of the parent-child relationship is proper where the child's emotional and physical development is threatened. *Id.* The juvenile court need not wait until the child is irreversibly harmed before terminating the parent-child relationship. *Id.*

### **I. Sufficiency of the Evidence**

Both parents argue that there is insufficient evidence to support the termination of their parental rights. This court will not set aside the juvenile court's judgment terminating a parent-child relationship unless the judgment is clearly erroneous. *Id.* at 929-30. When reviewing the sufficiency of the evidence to support an involuntary termination of a parent-child relationship, we neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* at 930. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

Indiana Code section 31-35-2-4(b)(2) sets out the following relevant elements that DCS must allege and prove by clear and convincing evidence in order to terminate a parent-child relationship:

- (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.

Here, both parents specifically contend DCS failed to prove there is a reasonable probability that the conditions that resulted in their children's removal will not be remedied.

To determine whether the conditions are likely to be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing and take into consideration any evidence of changed conditions. *D.D.*, 804 N.E.2d at 266. 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.*

Here, our review of the evidence reveals the children were removed from Mother over three years ago. At the time of the termination hearing, Mother did not have stable employment or housing. A third child had been removed from her care, and she had told the DCS caseworker that she did not intend to follow through with the DCS goals. Father also lacked stable employment and housing, and has three additional children that he does not regularly support. He has never established paternity of A.A.

Recognizing our deferential standard of review, we find this evidence supports the

juvenile court's finding that there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied.<sup>2</sup>

## II. Due Process

Father also argues his due process rights were violated because DCS failed to make reasonable efforts to reunify him with A.A. when it failed to offer him services. Indiana Code section 31-34-21-5.5(b)(2) (2009) provides DCS shall "make reasonable efforts to preserve and reunify families . . . [and] make it possible for the child to return safely to the child's home as soon as possible." Despite the statutory language, 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 although 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.* Here, we have found sufficient evidence to support the termination, and we find no due process violation.

We 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." *Egley*

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<sup>2</sup> Father further argues DCS failed to prove the continuation of the parent-child relationship poses a threat to the well-being of his daughter. However, because it is written in the disjunctive, the statute requires the juvenile court to find only one of the two requirements of subsection (B) by clear and convincing evidence. *In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied*. Standing alone, the finding that there is a reasonable probability that the conditions that resulted in A.A.'s removal will not be remedied satisfies the requirement listed in subsection (B). *Id.* We therefore need not address Father's argument that DCS failed to

*v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1235 (Ind. 1992). We find no such error here and therefore affirm the juvenile court.

The judgment of the juvenile court is affirmed.

DARDEN, J., and BROWN, J., concur.

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prove the continuation of the parent-child relationship poses a threat to the well-being of his daughter.