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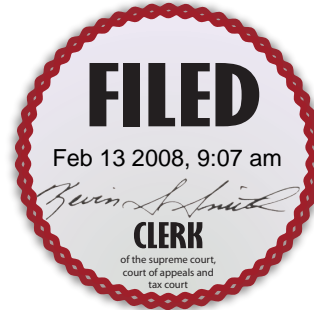
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IN THE  
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF PARENT-CHILD )  
RELATIONSHIP OF D.P., MINOR CHILD, AND )  
HIS FATHER GORDON TURENTINE, )  
 )  
GORDON TURENTINE, )  
 )  
Appellant-Respondent, )  
 )  
vs. )  
 )  
MARION COUNTY DEPARTMENT OF )  
FAMILY AND CHILDREN, )  
 )  
Appellee-Petitioner, )  
and )  
CHILD ADVOCATES, INC., )  
 )  
Co-Appellee-Guardian ad Litem. )



No. 49A02-0708-JV-715

APPEAL FROM THE MARION SUPERIOR COURT  
JUVENILE DIVISION

The Honorable Larry Bradley, Magistrate  
The Honorable Marilyn A. Moores, Judge  
Cause No. 49D09-0605-JT-19191

February 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

## STATEMENT OF THE CASE

Appellant-Respondent, Gordon Turentine (Father), appeals the involuntary termination of his parental rights to his son, D.P.

We affirm.

## ISSUE

Father raises one issue on appeal that we restate as follows: Whether the juvenile court's judgment terminating Father's parental rights to D.P. is supported by clear and convincing evidence.

## FACTS AND PROCEDURAL HISTORY

The facts most favorable to the juvenile court's judgment indicate that Father and S.P. (Mother) are the biological parents of D.P., who was born on September 15, 2001. DNA test results indicate that Father, who was not married to Mother at the time of D.P.'s birth, is the biological father of D.P. However, Father has never established legal paternity of D.P. On February 2, 2002, Father was arrested for dealing in cocaine and possession with intent to deal cocaine. As a result of his conviction on these charges, Father was incarcerated until April 5, 2007.

Mother, who is the sole legal parent of D.P., resided at the Crane House Correctional Facility with D.P. and his half-sibling A.B. until March 29, 2005. On or about March 29, 2005, Mother fled this facility with both children through a second-story window. The children were later located at the home of their maternal grandmother by law enforcement officers. Mother's whereabouts were unknown and there was no one present with legal responsibility over the children.

On April 1, 2005, the Marion County Department of Child Services (MCDCS) filed a petition alleging D.P. and A.B. were children in need of services (CHINS).<sup>1</sup> In this petition, Father was named as the putative father of D.P. In addition to the fact Mother's whereabouts were unknown, the CHINS petition also alleged the children were in need of services because "[n]either of the alleged fathers identified above . . . have come forward to successfully demonstrate to the MCDCS the ability or willingness to appropriately parent their child or children. The whereabouts of these individuals are currently unknown." (Pet. Ex. 3, p.6).

On August 3, 2005, Father, who was still incarcerated, admitted that D.P. was a CHINS, and the trial court entered a dispositional order removing D.P. from the care, custody and control of Father. The trial court also issued a parental participation decree wherein Father was ordered to participate in various services in order to facilitate reunification with D.P., including maintaining weekly contact with the caseworker, executing a release of information to allow the MCDCS to monitor Father's compliance with court-ordered services, participating in a parenting assessment and parenting classes and following all resulting recommendations, completing a substance abuse evaluation and following all resulting recommendations, establishing legal paternity of D.P., obtaining suitable housing and legal income sufficient to support himself and D.P., and participating in and successfully completing a home-based counseling program.

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<sup>1</sup> The CHINS action and the ensuing termination proceedings were filed as to both D.P. and A.B. However, neither Mother nor A.B.'s biological Father are parties to this appeal. Additionally, Father only appeals the termination of his parental rights to his biological child, D.P.

On May 9, 2006, the MCDCS filed a petition for the involuntary termination of Father's parental rights to D.P. A fact-finding hearing on the termination petition commenced on June 15, 2007, and was completed on June 25, 2007. On June 26, 2007, the juvenile court issued its judgment terminating Father's parental rights to D.P. In so doing, the juvenile court made the following pertinent findings:

ORDER TERMINATING PARENT-CHILD RELATIONSHIP

\* \* \*

FINDINGS OF FACT

By *clear and convincing evidence*, the Court now finds:

\* \* \*

10. [Father] was incarcerated at the time of the CHINS filing on April 1, 2005 and remained so until April of 2007. His criminal history . . . shows his last guilty charge prior to the CHINS as being for Dealing in Cocaine as a Class B Felony.
11. There was very limited contact between [Father] and the family case worker during the period of incarceration and no services were referred.
12. [Father] had a certificate of completing one parenting class while incarcerated. He may have taken other classes in jail but did not submit the information to the family case manager to see if the programs would satisfy the services ordered by the CHINS Court. Because of misbehavior, any privilege to take classes was suspended during his last approximate year prior to being released. Given [Father's] inability to name one step of the twelve step Alcoholic's Anonymous Program, additional programs are needed.
13. [Father] has had six contacts with the family case manager in the seven weeks since being released from prison. He requested that services be referred for him during this time.
14. A parenting assessment was referred for [Father]. Due to missed appointments, only a portion of the assessment was completed and no report, including recommendations, has been made.
15. A visitation referral between [Father] and his son was not made until Mid-May as a result of [Father] missing his April 13, 2007 Placement and Jurisdiction Review Hearing in the CHINS case. Three weekly visitations were scheduled prior to the start of trial in this matter. [Father] failed to participate in any of the visitations prior to trial or in

the ten days between evidentiary hearings. As a result, the bonding portion of the parenting assessment has not been completed.

16. [D.P.] was approximately five months old when [Father] was incarcerated. He has had unauthorized visits with his child during the paternal grandmother's one hour weekly visitations, but not in the last three weeks.
17. No proof of employment or income has been provided by [Father]. He has resided with a cousin for the last ten days. Prior to that, he resided with his mother and another person in a two bedroom residence.
18. Although [Father] was incarcerated during most of this Termination of Parent-Child Relationship Proceeding and the underlying CHINS Proceeding, he has not shown the appropriate interest in completing initial services, or seeing his child, since his release to indicate that reunification is a possibility given more time.

\* \* \*

20. [D.P.] is placed in foster care where he has integrated with the foster family. . . . this current placement is not pre-adoptive. MCDCS's plan for permanency is adoption given [D.P.'s] age and the fact that he is a highly adoptable child.
21. After being in limbo for over two years, it would be in the best interests of both children that a termination of the parent-child relationship be granted to allow the children to be adopted and obtain permanency and stability.

Appellant's App. pp. 16-17. Father now appeals. Additional facts will be provided as necessary.

#### DISCUSSION AND DECISION

Father argues that the trial court improperly terminated his parental rights to D.P. Specifically, Father contends that the MCDCS failed to prove by clear and convincing evidence that the reasons for D.P.'s removal and continued placement outside of Father's care and custody would not be remedied. Additionally, Father asserts that he "attempted to perform services ordered by the CHINS court, but was unable to do so" in the approximately two-month time period he had between his release from prison and the date of the

termination hearing. (Appellant's Brief p. 4). Thus, Father concludes that he should have been given more time to complete the ordered services.

Initially, we note that 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). Thus, 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.*

In deference to the trial court's unique position to assess the evidence, we will set aside the trial 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*. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *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.

Here, the trial court made specific findings and conclusions thereon in its order terminating Father's parental rights. Where the trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake County Office of Family & 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.*

“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, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

\* \* \*
- (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.

Ind. Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep’t of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

In the present case, Father challenges the trial court’s determination that the conditions that resulted in D.P.’s removal and continued placement outside of Father’s care will not be remedied, arguing he “substantially performed the services required of him.” (Appellant’s

Br. 11). In making this assertion, Father claims he (1) contacted the caseworker six times during the seven weeks since his release from prison, (2) obtained full-time employment at a CVS warehouse, (3) completed a ten-week parenting course while in prison, and (4) was living with his cousin and looking for a place of his own.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the 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*. In so doing, the trial court may consider the parent's response to the services offered through the Department of Child Services. *Lang v. Starke County Office of Family and Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. Additionally, the MCDCS is not required to rule out all possibilities of change; rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." *In re Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In this case, there is ample evidence to demonstrate that there is a reasonable probability that Father's behavior will not change and, consequently, that the conditions resulting in the child's removal from Father's care will not be remedied. The record reveals that the MCDCS initially became involved with the family because Mother had abandoned the children and because Father, whose whereabouts were unknown at the time, was incarcerated. Father admitted to the allegations contained in the CHINS petition and was ordered to, among other things, complete drug and alcohol assessments and follow all



resulting recommendations, complete a parenting assessment and classes, maintain contact with the case worker, execute the necessary releases so that the MCDCS could monitor Father's compliance with court orders, and establish legal paternity of D.P. Admittedly, Father's incarceration until approximately two months prior to the termination hearing would have prevented him from completing certain court-ordered services, such as home-based counseling. However, the evidence supports the trial court's finding that "although [Father] was incarcerated during most of [the termination and CHINS proceedings], he has not shown the appropriate interest in completing initial services, or seeing his child, since his release to indicate that reunification is a possibility given more time." (Appellant's App. p. 16).

The record reveals Father failed to establish legal paternity of D.P., failed to submit information to the caseworker so that she could determine if the class he participated in while incarcerated satisfied the court-ordered services, and failed to provide proof of either legal employment or stable and suitable housing. Additionally, despite making six contacts with the caseworker after his release from prison and requesting referrals for services, Father failed to complete portions of the parenting assessment due to missed appointments, and failed to participate in any of the visitations prior to trial or during the ten days between evidentiary hearings. As a result, the bonding portion of the parenting assessment could not be completed.

"[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support a finding that there exists no reasonable probability that the conditions will change." *Lang*, 861 N.E.2d at 372. Likewise, the failure to exercise the right to visit one's child demonstrates a

lack of commitment to complete the actions necessary to preserve the parent-child relationship. *Id.* Over two years has passed between the time of D.P.'s removal from his parent's care and the time of the termination hearing. It is not in D.P.'s best interest to ask him to continue to wait until Father is able to get, and benefit from, the help that he needs. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them).

Based on the foregoing, we find that the evidence supports the trial court's findings and ultimate conclusion that there is a reasonable probability that the conditions leading to the removal and continued placement of D.P. outside of Father's care would not be remedied. Father's arguments to the contrary amount to nothing more than an invitation to reweigh the evidence, and this we may not do. *See Bester*, 839 N.E.2d at 149 (stating that the trial court is vested with the responsibility of resolving conflicting testimony and, on review, an appellate court may not reweigh the evidence or judge witness credibility).

#### CONCLUSION

Based on the foregoing, we conclude that the trial court's judgment terminating Father's parental rights was supported by clear and convincing evidence.

Affirmed.

KIRSCH, J., and MAY, J., concur.