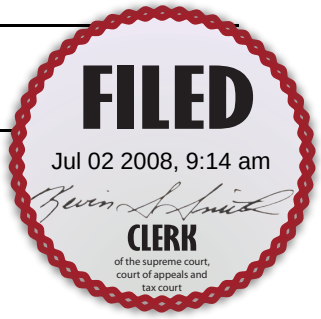
ATTORNEY FOR APPELLANT:

**PATRICIA CARESS M[c]MATH**
Indianapolis, Indiana

ATTORNEYS FOR APPELLEES:

**TAMMI FORSTER**
Marion County Department of Child
Indianapolis, Indiana

# 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.P., minor child, and her father, Norman P., | ) | |
| NORMAN P., | ) | |
| Appellant-Respondent, | ) | |
| vs. | ) | No. 49A02-0712-JV-1086 |
| MARION COUNTY DEPARTMENT OF CHILD SERVICES, | ) | |
| Appellee-Petitioner, | ) | |
| CHILD ADVOCATES, INC., | ) | |
| Co-Appellee (Guardian Ad Litem), | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Larry Bradley, Magistrate
The Honorable Marilyn Moores, Judge
Cause No. 49D09-0708-JT-32142

**July 2, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Norman P. ("Father") appeals the involuntary termination of his parental rights, in Marion Superior Court, to his daughter, A.P. Father raises one issue on appeal, which we restate as whether the juvenile court's judgment terminating Father's parental rights to A.P. is supported by clear and convincing evidence.

We affirm.

## FACTS AND PROCEDURAL HISTORY

Father is the biological father of A.P., born on March 12, 1996. The facts most favorable to the judgment reveal that on April 11, 2006, the Marion County Department of Child Services ("MCDCS") filed a petition alleging ten-year-old A.P. and her three half siblings[1] were children in need of services ("CHINS") because their mother had failed to provide them with a safe and stable home and had an ongoing substance abuse problem. The CHINS petition further indicated that Father was incarcerated at the Wabash Valley Correctional Facility and that Father had failed to "demonstrate an ability or willingness to appropriately parent [A.P.] at this time." *Pet'r's Ex.* 3.

On March 11, 2006, Father, who remained incarcerated, appeared telephonically for the initial hearing on the CHINS petition. Father requested and was appointed counsel. A fact-finding hearing on the CHINS petition as to Father was held on August 2, 2006, after which A.P. was determined to be a CHINS and formally removed from Father's care and custody. The juvenile court proceeded to disposition, and Father was ordered, via the court's Participation Decree, to participate in a variety of services,

[1] Father is not the biological father of A.P.'s siblings. He therefore appeals the termination of his parental rights to A.P. only. A.P.'s mother and the other alleged fathers do not participate in this appeal.

including but not limited to: (1) maintain weekly contact with the MCDCS caseworker by letter or telephone; (2) secure and maintain a legal and stable source of income adequate to support all household members, including A.P.; (3) obtain suitable housing; (4) participate in home-based counseling; (5) complete a parenting assessment and follow all resulting recommendations; (6) complete age-appropriate parenting classes; (7) complete all handed-down prison sentences; and (8) participate in mental health treatment while being housed at the Department of Correction and follow up with such treatment upon his release in order to achieve reunification with A.P.

The MCDCS filed a petition to terminate Father's parental rights to A.P. on August 2, 2007. A fact-finding hearing of the termination petition was held on November 15, 2007. Father appeared telephonically and was represented by counsel. At the conclusion of the hearing, the juvenile court took the matter under advisement and, on November 20, 2007, issued its judgment terminating Father's parental rights to A.P. This appeal ensued.

## DISCUSSION AND DECISION

Father alleges the MCDCS failed to prove by clear and convincing evidence each element set forth in IC 31-35-2-4(b)(2), as is required for the involuntary termination of parental rights.

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*.

Here, the juvenile court made specific findings in terminating Father's parental rights. Where the juvenile court enters specific findings of fact and conclusion thereon, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. *Id.* In deference to the juvenile 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*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"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 juvenile 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. 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 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.

IC 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). Father argues on appeal the MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in A.P.'s removal and continued placement outside his care will not be remedied. Father also asserts the MCDCS failed to prove termination of his parental rights to A.P. is in A.P.'s best interests. We will address each argument in turn.

*A. Remedy of Conditions*

When considering whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile 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 whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). 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 determining there is a reasonable probability Father's behavior will not change and the conditions resulting in A.P.'s removal and continued placement outside Father's care will not be remedied, the juvenile court made the following pertinent findings:

> 8. There is a reasonable probability that the conditions that resulted in [A.P.'s] removal and continued placement outside the home will not be remedied by [Father]. He was incarcerated at the time the CHINS action was filed and remains incarcerated, his earliest outdate being July 9, 2008. He has not seen his daughter since his [incarceration] in 2001 on convictions of Possession of Marijuana/Hash, Forgery, and Perjury.
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> 9. [Father] has completed, since mid-2006, several classes on parenting, drug education and self-betterment. Although commendable, he would still have to complete services through MCDCS after his release. [A.P.'s] permanency would be in limbo [while] awaiting [Father's] release and participation in services. Given [Father's] history of substance abuse, his first conviction of possession being in 1995, and his long history of criminal activity, there is a reasonable probability that [Father] will be unsuccessful in maintaining sobriety and a legal source of income.

*Appellant's App.* at 13. The juvenile court then concluded, "There is a reasonable probability that the conditions that resulted in the children's removal and continued placement . . . outside the home will not be remedied." *Id.* at 14. Our review of the

record reveals there is clear and convincing evidence supporting the juvenile court's findings and conclusion set forth above. These findings and conclusion support the juvenile court's ultimate decision to terminate Father's parental rights to A.P.

The record reveals that Father has a significant criminal history involving drug abuse dating back to his was conviction for possession of marijuana when he was twenty years old. Since that time, Father has also been convicted of carrying a handgun without a license in 1997, burglary, residential entry, and resisting law enforcement in 1998 and again in 2000, and operating a vehicle while intoxicated and possession of marijuana in 2001. At the time A.P. was physically removed from her mother in April 2006, Father was unavailable to parent A.P. because he was incarcerated due to multiple convictions for possession of marijuana/hashish, forgery, and perjury.

At the time of the termination hearing on November 15, 2007, Father was still incarcerated and therefore unavailable to parent A.P. Moreover, Father's earliest possible release date was not until July 9, 2008, approximately eight months later. Thus, the "condition" resulting in A.P.'s removal from Father's care, namely, Father's unavailability due to his incarceration, still had not been remedied. As stated previously, in 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 juvenile court must judge a parent's fitness to care for his child *at the time of the termination hearing*. *D.D.*, 804 N.E.2d at 266.

We further observe that at the time of the termination hearing, Father had also failed to complete a majority of the dispositional goals set during the underlying CHINS

proceedings. For example, in addition to not having secured a stable home and legal source of income, Father had not participated in a parenting assessment or submitted to a drug and alcohol assessment. Father had also failed to maintain regular contact with the MCDCS caseworker and to participate in mental health services during his incarceration despite being specifically ordered to do so by the juvenile court. While we acknowledge and commend Father's efforts to improve himself while incarcerated by participating in various parenting and anger management classes, his ability to remain sober, to obtain legal employment, and to properly parent A.P. once released back into the "real world" remains unknown.

The juvenile court was permitted to judge Father's credibility and weigh the evidence of changed conditions against the testimony demonstrating Father's habitual patterns of conduct. On appeal, we cannot reweigh the evidence or judge the credibility of witnesses. *See In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (holding that mother's arguments conditions had changed and she was now drug-free constituted impermissible invitation to reweigh evidence). Based on the foregoing, we cannot say the juvenile court committed clear error when it found there was a reasonable probability Father will be unsuccessful in maintaining sobriety and a legal source of income in light of his "history of substance abuse" and "long history of criminal activity." *Appellant's App.* at 14. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court did not commit reversible error when it gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to termination hearing than to mother's

evidence that she had changed her life to better accommodate children's needs); *see also Castro v. State Office of Family & Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (concluding that trial court did not commit clear error in determining the conditions leading to child's removal from father would not be remedied where father, who had been incarcerated throughout CHINS and termination proceedings, was not expected to be released for several years after termination hearing), *trans. denied.*

*B. Best Interests*

Father next contends the MCDCS failed to prove by clear and convincing evidence that termination of his parental rights is in A.P.'s best interests. Specifically, Father asserts he has "maintained a relationship with his daughter to the extent it is possible while he has been in prison" through "regular letter writing" and argues there would be "little if any impact on [A.P.] if the wardship was continued for a few more months until [Father] was released from prison and had a chance to complete services and show he was fit to parent [A.P.]." *Appellant's Br.* at 6-7.

We are mindful that in determining what is in the best interests of the child, the court is required to look beyond the factors identified by the Department of Child Services and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the juvenile court must subordinate the interests of the parent to those of the children. *Id.* Additionally, we have previously determined that the recommendations of the caseworker and Guardian Ad Litem ("GAL") that parental rights be terminated support a finding that termination is in the child's best interest. *Id.*

The juvenile court made the following pertinent findings when it decided that termination of Father's parental rights is in A.P.'s best interests:

> 10. Prior to [Father's] incarceration six years ago, his relationship with [A.P.] was to see her, with members of his family, for two hours a week at best.
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> * * *
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> 13. [A.P.] and [K.T.] have resided in the care of their maternal grandfather . . . since May or June of 2006. This placement is pre-adoptive. The children are doing well in their placement and their needs are being met. The children need to know that they will be cared for and their needs will be met by a consistent caretaker throughout their childhood. This need is shown by [A.P.] when she exhibits fear that the family case manager is going to remove her from her grandfather.
>
> 14. Termination of parental rights, and a subsequent adoption, will provide the children with permanency in a home together as siblings.
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> 15. Taking into consideration the duration the children have been removed, the unavailability and lack of services on the part of the parents, the children's wishes and current situation, Tina [Wooldridge], as Guardian [A]d Litem, believes that the best interests of the children would be served by remaining in the care of their grandfather.

*Appellant's App.* at 13-14. These findings, too, are supported by the evidence. Additionally, the record reveals MCDCS caseworker Dale Reynolds ("Reynolds") and GAL Tina Renee Wooldridge ("Wooldridge") both recommended termination of Father's parental rights to A.P. as well.

In recommending termination of Father's parental rights to A.P., Reynolds testified the MCDCS "believe[s] that it's in the best interest of [A.P.] for [Father's] parental rights to be terminated so that [A.P. is] free for adoption and that [she] can have

permanency in [her] life." *Tr*. at 50. Reynolds further revealed A.P.'s need for permanency when he explained, "I mean the kids have shared [with] me that every time I, I come to the home, they're afraid. They think I'm gonna remove them and take them from their grandpa. And so they just still have this sense of . . . being in limbo." *Id*. at 51.

Wooldridge testified that she had observed the interactions of A.P. with her grandfather and agreed that they were "very comfortable" with each other and that the grandfather was meeting her needs. *Id*. at 72. When questioned as to her recommendation regarding a permanency plan for A.P. and her brother, K.T., Wooldridge responded, "I recommend that they stay where they are currently placed with their grandfather." *Id*. at 75. When asked what the basis of her recommendation was, Wooldridge explained, "My basis is that where they currently are is providing for them what they need, stability. There's love in the home. Their needs are being met. They can stay in the same school system with the same friends. I think that the grandfather is doing a fine job of taking care of the kids." *Id*. at 76.

Based on the totality of the evidence, we conclude the juvenile court's determination that termination is in A.P.'s best interests is supported by clear and convincing evidence. *See In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of court appointed special advocate and family case manager, coupled with evidence that conditions resulting in continued placement outside home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*; *see also McBride*, 798 N.E.2d at 203 (stating that

testimony of child's GAL regarding child's need for permanency supports finding that termination is in child's best interests). Accordingly, we find no error.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.