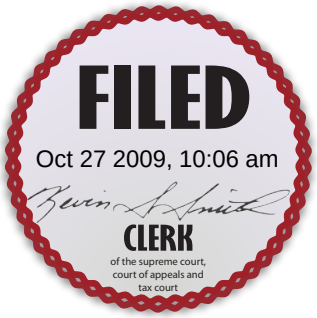

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF: S.W., A.H., and A.S.H. (Minor Children)	)	
P.H. and A.H.,	)	
Appellants-Respondents,	)	
vs.	)	No. 76A04-0905-JV-258
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
Cause Nos. 76C01-0805-JT-153; 76C01-0805-JT-154; 76C01-0805-JT-156

October 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

P.H. ("Father") and A.H. ("Mother") appeal the termination of their parental rights as to their children, S., An. and Al. (collectively, the "Children").[1]

We affirm.

ISSUES

Mother raises one issue on appeal:

> Whether the trial court deprived Mother of her constitutional right to due process.

Father raises one issue on appeal:

> Whether there was clear and convincing evidence to support the termination of Father's parental rights.

FACTS

Father and Mother have three children: S., born on January 31, 2004; An., born on December 30, 2004; and Al., born on February 27, 2007. On July 7, 2006, DCS received a report of neglect. Following an investigation, DCS substantiated the allegation, finding that the bed in which An. was sleeping had been smeared with feces and that there were feces on the bedroom floor.

On July 12, 2006, DCS filed petitions alleging the Children to be in need of services ("CHINS"). According to the petitions, on or about November 22, 2005, Mother

[1] Mother has another child, born on April 4, 2007. It is not clear from the record whether paternity of this child has been established. A separate termination case regarding this child has been commenced.

and Father previously had entered into an informal adjustment with the Steuben County Department of Child Services ("DCS"), "which was extended past i[t]s expiration date of June 9, 2006, due to poor home conditions." (DCS Exs. 7, 8, and 9). Despite the Informal Adjustment and services provided, a family case manager "found food on the stove with mold growing on it, [and] mounds of dirty clothes and dirty diapers on the floor in the children's bedroom" during a home visit on May 31, 2006. *Id.* On June 26, 2006, the family case manager "found rotten chicken in the sink, rotten potatoes on the kitchen table, cereal scattered throughout the kitchen, and mounds of clothes scattered through the home." *Id.*

At the time of the filing of the petitions, Father was incarcerated for violating his probation. DCS removed the Children and placed them in licensed foster care.

On September 29, 2006, DCS filed motions to amend petitions to add the assertion that Mother lacked the ability to adequately parent the Children. DCS based this allegation upon a parenting assessment conducted by Dr. James Cates on September 7, 2006.

At some time prior to November of 2006, Father was released from jail. Upon his release, he and Mother moved in with the Children's paternal grandmother. DCS referred Father and Mother to Lifeline Youth & Family, Inc. ("Lifeline") for services. Its case plan recommended that they "cooperate with Lifeline . . . on issues of parenting and domestic violence"; follow all recommendations made by Lifeline; "continue to attend supervised visitation and . . . fully engage with all of the children during these visitations"; "maintain a safe and stable living environment for the children"; "obtain and

maintain stable income and show [the] DCS case manager proof of such"; and "cooperate with DCS and it[s] representatives, including allowing unannounced home visits with the DCS case manager." *Id.* Further, DCS recommended that Father submit to random drug tests as requested by DCS. On or about January 27, 2007, the trial court entered its dispositional order, in which it adopted DCS's recommendations.

According to DCS's status reports, Father tested positive for marijuana on October 30, 2007, and continued to test positive, with his last positive test on January 14, 2008. In addition to its prior recommendations, DCS also recommended that Father "attend and participate in substance abuse therapy, and prove [sic] DCS documentation of completion." *Id.* It also reported that Father had been "uncooperative with DCS and Lifeline" and had "refused to participate in any of the home based services." *Id.* Additionally, Father had not visited the Children since February 8, 2007.

On November 13, 2007, the trial court ordered that DCS's recommendations be adopted. It further ordered that Father pass three consecutive drug tests; and Father and Mother participate in two weeks of intense supervised parenting through Lifeline.

On April 22, 2008, the trial court ordered Mother to obtain housing within ninety days due to Mother's report that she had been living in a homeless shelter. The trial court also ordered Father and Mother to cooperate with DCS, Lifeline, and the court-appointed special advocate ("CASA"); and to not smoke around the Children due to health concerns.

Father and Mother dissolved their marriage on May 30, 2008. As the Children were in the care of DCS, the trial court ordered Father and Mother to pay child support in the amount of $83.00 and $82.00 per week, respectively.

On May 1, 2008, DCS filed its petition for involuntary termination of Mother's and Father's parental rights as to the Children. It filed amended petitions on September 10, 2008, asserting that "reasonable services have been offered or provided to the parents to assist them in fulfilling their parental obligations and either the parents have failed to accept the services or the services offered have been ineffective." (Mother's App. 92, 95, and 98).

The trial court held a final hearing on January 29, 2009. Father testified that he worked odd jobs to support himself but that he does not have "a steady job" or income. (Tr. 65). He further testified that he had not found or maintained housing; rather, he lived with friends in different towns. Father admitted that he had been convicted of class D felony theft in 2005 and class B misdemeanor criminal mischief in 2008. He also admitted that he had a charge pending against him for purchasing more than three (3) grams of ephedrine or pseudoephedrine in one (1) week as a class C misdemeanor. Although he had received a copy of the dissolution decree, Father had not paid any child support.

Mother testified that she had not maintained employment but had been leasing a one-bedroom apartment since May of 2008. According to Mother, she receives food stamps as well as $674.00 in social security disability payments per month because she is "slow." (Tr. 15). She further testified that she has created a schedule for cleaning her

apartment; feeds the Children nutritious meals; and tries to redirect the Children when they misbehave.

Dr. Cates testified that he performed a psychological assessment of Mother on September 7, 2006. He testified that Mother has difficulties "assimilat[ing] information from the environment" and that "she's a fairly passive person." (Tr. 35, 36). He explained that Mother is a "person who tends to let life come at her and what happens happens and she makes the best of it she can." (Tr. 36). In Mother's case, "the problem with that is that [she] fail[s] to develop adequate coping mechanisms"; fails "to develop ways to responding to difficult situations"; and fails to have her "attention called to situations where [she] need[s] to be responding and responding effectively and quickly." (Tr. 36). Based on his assessment and information provided by DCS, he ultimately diagnosed Mother with "Neglect of Child (Perpetrator)." (DCS's Ex. 1). He opined that she "was at risk for remaining neglectful of her children." (Tr. 36).

Jennifer Vitatoe, the family's case manager until October 8, 2007, testified that she first came into contact with the family in November of 2005. Upon investigation, she determined that S. and An. were sleeping in the basement of their paternal grandmother's home. The basement did not have a fire escape, and there were other hazards in the home. When Father and Mother refused to cooperate with DCS, DCS removed S. and An. DCS returned S. and An. to their parents' care on January 3, 2006.

She further testified that DCS received a report regarding the Children's living conditions on July 7, 2006. Due to conditions in the home as well as past history, DCS removed the Children. DCS provided Father and Mother with several services, including

supervised visitation and home-based services. DCS referred Father to Lifeline for assistance in obtaining employment. DCS also assisted Mother in obtaining prescription medication and public assistance.

According to Vitatoe, Mother "attended most of her supervised visitation . . . ." (Tr. 94). Father, however, "did not comply with the home based component as far as the parenting and the domestic violence issues." (Tr. 94). He also "had quite a few no shows during his supervised visitations with the children." (Tr. 95).

Dawn O'Connor, the family's case manager after October 8, 2007, testified that Father missed several supervised visitations; "did not cooperate with doing the random drug screens"; failed to participate in parenting classes; and failed to provide proof of employment or income to DCS. (Tr. 110). He also did not participate in a substance abuse therapy program despite DCS offering to pay for his treatment. Due to Father's failure to submit to a hair follicle test in August of 2008, DCS suspended his visits with the Children.

She also testified that Mother's compliance with the case plan "has been sporadic off and on throughout the course of the case" and that Mother missed several appointments with Lifeline workers. (Tr. 108). According to O'Connor, Mother "understands what's being taught as for the parenting but it doesn't seem to be implemented during the visitations." (Tr. 110). Mother refused to create a budget "so that she could make her money last throughout the entire month" and had difficulties paying her rent and other bills. (Tr. 110-11).

As to the condition of her living environment, O'Connor testified that Mother's apartment appeared clean during a visit conducted the week prior to the final hearing. However, during a home visit on January 5, 2009, she observed several toys, trash, empty bottles, and a dirty diaper lying on the floor. She testified that "[t]his is something that's kind of on-going." (Tr. 113). She had received reports from Lifeline that "there was at least a six (6) week period that . . . [Mother] had not cleaned the toilet," and O'Connor personally observed "brown and black stains around the toilet rim . . . ." (Tr. 113). O'Connor testified that she visited Mother on a weekly basis and would find "toys all over to the point where you couldn't even walk into the room" or "dishes all over the sink and the counter." (Tr. 115). She has observed cigarette ashes in the bathroom sink and "bags of tobacco" within the Children's reach. (Tr. 116).

She further testified that Mother "needs to constantly be prodded to clean," and that without DCS's intervention, Mother "seems to be unlikely to be able to care for her children because she has not been able to make her money last throughout the month just to care for herself"; "[s]he runs out of food even though she's only feeding herself." (Tr. 113, 114).

O'Connor also testified that Mother failed to complete parenting assignments. She testified that Mother is ineffective at disciplining the Children and often ignored the Children during visitations.

Bonnie Schoppman, the CASA since November of 2005, recommended termination of the parental rights. She testified that Mother "has a lot of problems controlling the [C]hildren," even during visits of only four hours. (Tr. 134). She testified

that she often found the apartment messy and so cluttered that the "[C]hildren were stumbling around." (Tr. 138). She opined that Mother is "overwhelmed" by the Children and seems incapable of caring for them without assistance. (Tr. 135).

Emilia Rains, a family consultant with Lifeline, testified that she had been working with Mother for approximately one year, meeting with Mother twice a week to address "issues of budgeting, parenting, safety for the [C]hildren, housing," and various other issues. (Tr. 146). She testified that their work on budgeting had not been "productive," (Tr. 146), because Mother often "ends up being short by the 8th of the month . . . ." (Tr. 147). Mother also refused to open a savings account, despite her money often being stolen. Rains testified that Mother seemed "open" to her suggestions but sometimes failed to follow through on them. (Tr. 151). Mother did, however, implement some suggestions for making the home environment safer for the Children, such as installing child-proof locks on cabinets.

Fred Speckert testified that he supervised visitations from November of 2007 through October of 2008. He opined that Mother could not adequately parent the Children without help. He testified that the Children refused to listen to Mother; often would lock themselves in the bathroom; refused to sit in a time out; and would strike Mother.

Courtney Gerig also supervised Mother's visitations with the Children. She testified that Mother often failed to adequately supervise the Children and would leave potentially hazardous items within the Children's reach. She testified that she often found the apartment "pretty cluttered," with toys "covering the floor" and "shoes and all

that kind of stuff laying [sic] around." (Tr. 184, 185). An. and Al. would "trip over things constantly . . . ." (Tr. 185). Mother also failed to supervise the Children during their bath time. She opined that Mother cannot "handle" the Children without the help of a family consultant. (Tr. 186). As to Father, she testified that he spoke with the Children on the telephone during visits.

The Children's foster mother testified that the Children have been in her home since July 7, 2007, and that she would like to adopt them.

On February 10, 2009, the trial court terminated Father's and Mother's parental rights. In its order, the trial court made the following relevant findings:

> 20. On September 7, 2006, Mother submitted to a psychological assessment performed by James A. Cates, Ph.D.
>
> 21. As a result of Dr. Cates' assessment, Mother was diagnosed as follows:
>
> a. Neglect of child (perpetrator);
> b. Partner Relational Problem; and,
> c. Personality Disorder NOS (Dependent and Passive/Aggressive traits)
>
> 22. The testing performed by Dr. Cates revealed that Mother presented herself as an individual in the extremely low range of verbal intelligence, and in the low average range of performance intelligence.
>
> 23. On Page 5 of Dr. Cates' psychological assessment he observed:
>
> "The most striking feature of [Mother's] responses is a virtually global passivity. She presents herself as a person who fails to be motivated by a desire for achievement, personal relationships, academic interests, new experiences, or even simply boredom. Indeed, she is likely willing to tolerate disorder—even filth—in her life, simply because she has no desire to be neat and tidy. She perceives herself as a "passive receiver of life's impact." While many would become depressed with such a role, or at a minimum frustrated, [Mother] seems to accept it, and remain unconcerned.

The concerned [sic] then, accrues to others, particularly when [Mother] becomes responsible for those who are helpless and dependent. Her laissez faire response to her environment is unacceptable as a parent."

24. The laissez faire attitude of Mother referenced by Dr. Cates in his report was observed by the Court during the hearing conducted on January 29, 2009.

25. Mother sat quietly, passively and for the most part emotionless throughout the hearing paying little, if any, attention to what the witnesses were saying. This conduct by Mother was not exhibited because she was being polite to the Court. She appeared to the Court to be absolutely overwhelmed at what was happening to her and unable to cope with the situation.

. . . .

27. Father remains homeless today. He seeks shelter either at the home of his mother or at the home of friends.

. . . .

31. Father, at the time of the hearing, did not have supervised parenting times scheduled. The Court had denied Father supervised parenting time because of his refusal to take a hair follicle test for the presence of controlled substances.

. . . .

41. Father has kept in contact with the children by telephoning Mother during her scheduled supervised parenting times.

42. Father, on rare occasions, has provided some money and food to Mother to help with her support and that of the children.

43. Father, at this time, has no regular source of income. Father relies for income upon part time jobs for which he is paid cash.

. . . .

47. Father was ordered to pay child support in the amount of $83.00 per week. Father had made no child support payments since the date of the Dissolution Decree of May 30, 2008.

(Mother's App. 112-16).

Additional facts will be provided as necessary.

DECISION

Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*, 534 U.S. 1161 (2002).

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *A.N.J.*, 690 N.E.2d at 720. We consider only the evidence most favorable to the judgment. *Id*. In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

1. Mother's Appeal

Mother asserts that the trial court violated her due process rights because it "went beyond an impartial arbiter and advocated and assisted [DCS]" by questioning Dr. Cates. Mother's Br. at 9. She also argues that the trial court violated her due process rights by making "observations and assumptions about [Mother] which . . . [she] had no opportunity to cross-examine or refute . . . ." *Id.*

> [T]he Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair

> proceeding. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of due process. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."
>
> The nature of process due in a termination of parental rights proceeding turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. The balancing of these factors recognizes that although due process is not dependent on the underlying facts of the particular case, it is nevertheless "flexible and calls for such procedural protections as the particular situation demands."

D.A. v. Monroe County Dep't of Child Serv., 869 N.E.2d 501, 510 (Ind. Ct. App. 2007) (internal citations omitted).

Both the private interests and the countervailing governmental interests that are affected by the proceeding are substantial. *Id.* "In particular, the action concerns a parent's interest in the care, custody, and control of h[er] children, which has been recognized as one of the most valued relationships in our culture." *Id.* The right to raise one's children is an essential and basic right. *Id.* Thus, "a parent's interest in the accuracy and justice of the decision is commanding." *Id.* "On the other hand, the State's parens patriae interest in protecting the welfare of the children involved is also significant." *Id.*

a. *Examination of Dr. Cates*

When balancing the competing interests of a parent and the State, we must consider the risk of error created by the challenged procedure. In this case, Mother claims that the risk of error is great, arguing that the trial court's questions posed to Dr.

Cates "appeared to breach the impartiality barrier and compromised the judge's neutrality and prejudiced [Mother]." Mother's Br. at 11.

> It is true that it is a violation of due process to combine the roles of judge and prosecutor in criminal trials. However, many judicial proceedings permit or encourage the trial court to take an active part in the examination of witnesses. In fact, most restrictions on the court's power to examine witnesses are relaxed in trials to the court. It must be remembered, too, that due process is a flexible standard which "cannot be divorced from the nature of the ultimate decision that is being made."

In re Commitment of A.W.D., 861 N.E.2d 1260, 1263 (Ind. Ct. App. 2007) (citing *Jones v. State*, 477 N.E.2d 353, 359 (Ind. Ct. App. 1985), *trans. denied*). The Indiana Supreme Court has recognized that in termination cases, "'the trial judge, who is the fact finder, is required to be an attentive and involved participant in the process.'" *Baker v. Marion County Office of Family and Children*, 810 N.E.2d 1035, 1041 (Ind. 2004) (quoting *In re Adoption of T.M.F.*, 573 A.2d 1035, 1042 (1990)).

Even in a criminal trial, the trial court "'may intervene in the fact-finding process and question witnesses in order to promote clarity or dispel obscurity.'" 861 N.E.2d at 1264 (quoting *Griffin v. State*, 698 N.E.2d 1261, 1265 (Ind. Ct. App. 1998), *trans. denied*). The defendant must demonstrate that the trial court's questioning of witnesses was harmful and prejudicial to his case in order to show reversible error. *Id.*

Here, the trial court and Dr. Cates engaged in the following colloquy:

> COURT: [M]y question is have you had an opportunity to have patients, or clients, with a similar diagnosis of [Mother]?
>
> . . . .
>
> COURT: I'm primarily concerned about your observation that she just, has been diagnosed as being the type of individual that's just going to sit

back and basically let the world run over her and take what the world offers and deal with it as best she can.

A: I have had other clients with that cluster of symptoms, yes.

. . . .

COURT: Were they capable of taking care of their children or did you see any harmful cause and effect in those cases between mother or father having that diagnosis and potential harm that could befall the child or children?

A: Because there are, particularly when they become parents, because these are parents who rely so heavily on the environment so much depends on who they're with. If they're with a stable parent whose role in life they see as taking care of someone it works out quite well.

COURT: That's fair and certainly understandable. [Mother] is presently by herself, she has no assistance. Based upon your understanding of the case up to September of '06, and I appreciate the fact that you've been left out of the loop since that time and things have changed somewhat, could you render to me a professional opinion based upon a reasonable degree of psychological certainty whether or not, if services could be performed to [Mother], she would be capable in time of being a fit mother to take care of her children?

A: By herself, I do not see it.

(Tr. 49-50). Father's and Mother's counsel followed with re-cross examinations.

We do not find that the trial court significantly compromised Mother's rights. The trial court's examination was conducted in an effort to clarify Dr. Cates' diagnoses of Mother as well as his opinion regarding the impact her psychological state may have on the Children. We cannot say that the trial court was challenging Dr. Cates' testimony or advocating a particular position. Thus we find no harm or prejudice. *See McManus v. State*, 433 N.E.2d 775, 778 (Ind. 1982) (finding no prejudice to the defendant where the trial court was trying to understand conflicting statements and was not challenging any

testimony or advocating a particular position). Furthermore, Mother had the opportunity to, and in fact did, cross-examine Dr. Cates following the trial court's questions. Thus, after balancing the substantial interest of Mother with that of the State, and in light of the minimal risk of error created by the challenged procedure, we conclude that the trial court's examination of Dr. Cates did not deny Mother due process of law.

b. *Trial court's observations*

Mother also asserts that the trial court violated her due process rights in observing her behavior during the final hearing and making findings thereon. She argues that the "trial court created an impossible situation for [her] in that she could not respond to the 'fact' which was not of the record." Mother's Br. at 13.

Again, the trial court found as follows:

> 24. The laissez faire attitude of Mother referenced by Dr. Cates in his report was observed by the Court during the hearing conducted on January 29, 2009.
>
> 25. Mother sat quietly, passively and for the most part emotionless throughout the hearing paying little, if any, attention to what the witnesses were saying. This conduct by Mother was not exhibited because she was being polite to the Court. She appeared to the Court to be absolutely overwhelmed at what was happening to her and unable to cope with the situation.

(Mother's App. 113).

We note that the trial court, as the fact-finder, is in a unique position to observe the demeanor of witnesses. It is for that reason that we give proper deference to the trial court. *See In re B.J.*, 879 N.E.2d 7, 23 (Ind. Ct. App. 2008). We therefore cannot say that the trial court abused Mother's due process rights in observing her demeanor and

making findings thereon, particularly where Mother's counsel had the opportunity to thoroughly examine her and introduce evidence on her behalf. Accordingly, we find no violation of Mother's due process rights.

2. Father's Appeal

Father asserts that DCS failed to present clear and convincing evidence to support the termination of his parental rights. Specifically, he argues that the sole allegation against him in the CHINS petition—his incarceration—has been remedied. He also argues that DCS failed to present clear and convincing evidence that the continuation of his parental relationship poses a threat to the Children's well-being and that termination of his parental rights is in the Children's best interests.

When DCS seeks to terminate parental rights, it must plead and prove in relevant part 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;
> (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). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

Because subsection (b)(2)(B) is written in the disjunctive, however, DCS need prove only one of the two elements by clear and convincing evidence. *See Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 153 n.5 (Ind. 2005). Thus, if we hold that the evidence sufficiently shows that the conditions resulting in removal will not

be remedied, we need not address whether the continuation of the parent-child relationship poses a threat to the well-being of the children. *See* I.C. § 31-35-2-4(b)(2)(B); *A.N.J.*, 690 N.E.2d at 721 n.2.

To determine whether the conditions are likely to be remedied, the trial court must examine the parent's fitness to care for the child "as of the time of the termination hearing and take into account any evidence of changed conditions." *In re S.P.H.*, 806 N.E.2d 874, 881 (Ind. Ct. App. 2004). The trial court, however, also must determine whether there is a substantial probability of future neglect or deprivation. *Id.* In so doing, the trial court "may properly consider 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." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003).

The trial court may also consider the services offered to the parent and the parent's response to those services. *Id.* "Finally, we must be ever mindful that parental rights, while constitutionally protected, are not absolute and must be subordinated to the best interests of the child when evaluating the circumstances surrounding termination." *Id.* Thus, the trial court need not wait until a child is irreversibly harmed such that the child's physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

Here, DCS initiated the CHINS proceeding because Father and Mother could not provide adequate care and housing for the Children. Since the Children's removal, Father has failed to maintain a steady income or stable housing. At the time of the

hearing, he testified that he lived with various friends. Furthermore, despite being offered services, he failed several drug tests and failed to complete treatment for his substance abuse.

As to Father's contention that the only allegation against him was that he was incarcerated, he has admitted that he has a charge pending against him for purchasing more than three (3) grams of ephedrine or pseudoephedrine in one (1) week as a class C misdemeanor. Such a charge could lead to imprisonment. *See* I.C. § 35-50-3-4. Given Father's pattern of conduct, we find that DCS established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the Children's removal from the parents' home will not be remedied.

Father also asserts that termination of his parental rights is not in the Children's best interests. He argues that their foster parents should be made their permanent guardians.

For the "best interest of the child" statutory element, the trial court is required to consider the totality of the evidence. *In re B.J.*, 879 N.E.2d 7, 22 (Ind. Ct. App. 2008), *trans. denied*. "[I]n determining the best interests of the children, the trial court must subordinate the interests of the parents to those of the children." *Id.* The testimony of a CASA and caseworker regarding the child's need for permanency supports a finding that termination is in the child's best interests. *McBride*, 798 N.E.2d at 203.

The Children's CASA testified that she believed termination to be in the Children's best interests because "it's not fair for the [C]hildren to keep going on and on being in foster care"; and "[t]hey need some stability[.]" (Tr. 135). We cannot say that

continued placement in foster care satisfies the Children's need for permanency and stability. Given the totality of the evidence, we find no error in concluding that termination of Father's rights would be in the Children's best interests.

Affirmed.

ROBB, J., and MATHIAS, J., concur.