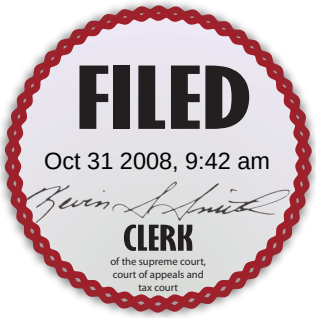

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IN THE
COURT OF APPEALS OF INDIANA

M.D., and J.D.,	)	
	)	
Appellants-Respondents,	)	
	)	
vs.	)	No. 12A02-0804-JV-304
	)	
CLINTON COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE CLINTON JUVENILE COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-0709-JT-153;
12C01-0709-JT-154

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

M.D. (Mother) and J.D. (Father) appeal the termination of their parental rights in Clinton Juvenile Court to their children, D.D. and J.D. The parents challenge the sufficiency of the evidence supporting the juvenile court's judgment.

We affirm.

Mother and Father are the biological parents of D.D., born April 26, 2004, and J.D., born February 20, 2006. The facts most favorable to the judgment reveal that on June 12, 2006, the Clinton County Department of Child Services (CCDCS) was contacted by Dr. Teresa Ruiz, J.D.'s pediatrician, concerning a suspicious spiral fracture of then three-month-old J.D.'s left femur. CCDCS case managers Landra Talbot and Jennifer Johnson immediately initiated an investigation, drove to Dr. Ruiz's office, and spoke with both the doctor and Mother. Upon learning of the seriousness of J.D.'s injuries and of the family's past involvement with the Boone County Department of Child Services due to life-threatening injuries D.D. had suffered while in Mother and Father's care when he was approximately three months old, both J.D. and D.D. were taken into emergency protective custody. Talbot and Johnson then transported J.D. to Riley Children's Hospital in Indianapolis for further testing and medical evaluation.

On June 13, 2006, CCDCS filed a petition alleging both D.D. and J.D. were children in need of services (CHINS). The CHINS petition alleged the children were "seriously endangered due to injury by the act or omission of the children's parent(s)" and because there was a "prior history of Shaken Baby Syndrome for [D.D] with an unknown perpetrator." *Appellant Father's Appendix* at 31. A fact-finding hearing on the CHINS petition was held on July 18, 2006. Mother, who was incarcerated on battery and neglect of a minor charges

stemming from the circumstances surrounding J.D.'s injuries, and Father both appeared at the hearing.[1] Both parents were represented by counsel and admitted to the allegations of the CHINS petition. The juvenile court thereafter proceeded with the dispositional hearing.

On July 20, 2006, the juvenile court issued its dispositional order finding D.D. and J.D. to be CHINS. The court's order formally removed the children from their parents' care and made them wards of CCDCS. The dispositional order also required Mother and Father to participate in a variety of services in order to achieve reunification with their children. The parents were ordered to: (1) begin weekly supervised visitation with the children (Mother was to begin visitation upon her release from incarceration); (2) cooperate with home-based services; (3) cooperate with the case plan; and (4) pay child support in the amount of $50 per week. Mother was also ordered to undergo a psychological evaluation.

Throughout the CHINS proceedings, various case plans were adopted in an attempt to help Mother and Father improve their parenting skills and to regain custody of their children. The case plans required both parents to, among other things, participate in (1) parenting, nutrition, and anger management classes, (2) individual counseling, and (3) a first-aid training class through the Red Cross. Mother and Father were also required to maintain regular contact with CCDCS case managers and to notify CCDCS of any change in residence within twenty-four hours.

Father initially complied with the case plan. He obtained employment, completed the

[1] Mother was arrested on June 19, 2006, and remained incarcerated in the Clinton County Jail until she was released on bond on April 13, 2007. Soon thereafter, Mother entered a plea agreement wherein she plead guilty to neglect of a dependent resulting in bodily injury as a class C felony and was sentenced to four years incarceration, two of which were suspended. Mother returned to jail on August 21, 2007, to complete the remaining eighty-five days on her sentence, including a subsequent thirty-day sentence for a class A misdemeanor battery conviction which arose from an incident that occurred while Mother was in jail.

Red Cross first-aid class, and exercised weekly visitation with the children. Father's compliance began to wane, however, after the commencement of home-based services in conjunction with extended visits with the children. Father subsequently ceased all communication with CCDCS for approximately eight months. It was later learned that Father had lost his job and had been moving between various residences during that time. At the time of the termination hearing, Father was living with a new girlfriend and had another child. Father had paid only $750 of the $3,650 he owed for child support.

Mother also failed to comply with court-ordered services. Although she participated in an anger management class while incarcerated, she failed to participate in any other court-ordered service including individual therapy, parenting classes, and nutrition classes. Mother also failed to submit to a psychological examination. Upon her release from jail, Mother did begin visitation. However, her visitation was inconsistent.

CCDCS filed petitions to involuntarily terminate both Mother's and Father's parental rights to D.D. and J.D. on September 11, 2007. A consolidated fact-finding hearing on the termination petitions commenced on December 7, 2007, and concluded on December 13, 2007. Both parents were present and represented by counsel. On February 19, 2008, the juvenile court issued its judgment terminating both Mother's and Father's parental rights to the children. The following appeal ensued.

Mother and Father argue on appeal that the juvenile court's judgment is clearly erroneous. Specifically, both parents assert CCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal from their care will not be remedied and that continuation of the parent-child

relationship poses a threat to D.D.'s and J.D.'s well-being. In so doing, Mother claims there were areas in her life where she had made improvements since being released from prison, such as in finding employment and in improving her housing situation. She therefore insists that this "progress . . . displays that there is a chance that the conditions in her home would have improved if she was given more time." *Appellant Mother's Brief* at 5. Father argues that "[t]he evidence show[s] [he] initially complied with all requirements of the [CCDCS] and interacted positively during visitations, other than during an eight (8) month absence." *Appellant Father's Brief* at 4. Father thus concludes that the children's well-being would not be jeopardized if his parental relationship was allowed to continue.

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 (Ind. Ct. App. 2001). 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 (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 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 (Ind. Ct. App. 1999), *trans. denied*. If the evidence and inferences support the juvenile court's decision, we must affirm. *Id.*

Here, the juvenile court made specific findings in its order terminating Mother's and Father's parental rights. Where the 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 (Ind. 2005). First, we determine whether the evidence supports the

findings, and second we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). 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. *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 juvenile court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.*

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

> (A) 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.

I.C. § 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

(Ind. 1992). If a trial court finds the allegations in a termination petition "described in section 4 of this chapter are true, the court shall terminate the parent-child relationship." I.C. § 31-35-2-8.

Mother's and Father's sole argument on appeal is that CCDCS failed to establish by clear and convincing evidence the requirement set forth in I.C. § 31-35-2-4(b)(2)(B), namely, that there is a reasonable probability the conditions resulting in the D.D.'s and J.D.'s removal will not be remedied and that continuation of Mother's and Father's parent-child relationships pose a threat to the children's well-being. We initially observe that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, the juvenile court was only required to find, by clear and convincing evidence, that one of the two requirements of subsection (B) had been met in order to terminate Mother's and Father's parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003) (stating I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive). We begin with the parents' latter argument that clear and convincing evidence does not support the juvenile court's determination that continuation of the parent-child relationships between Mother and the children, and Father and the children, poses a threat to the children's well-being.

Termination of a parent-child relationship is proper where the child's emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927 (Ind. Ct. App. 2002), *trans. denied*. 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 (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 (Ind. Ct. App. 2000). In addition, the juvenile court must subordinate the interests of the parent to those of the child when evaluating the circumstances surrounding the termination. *In re R.S.*, 774 N.E.2d at 930. A juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

In determining that continuation of the parent-child relationships pose a threat to D.D.'s and J.D.'s well-being, the juvenile court made the following pertinent findings:[2]

> 4. [CCDCS] became involved with the . . . family on June 12, 2006, when Case Managers Landra Talbot and Jennifer M. Johnson were called to the Witham Physician's Office in Boone County by Dr. Teresa Ruiz concerning a suspicious spiral fracture of the left femur bone of a 3 1/2 month old child named [J.D.].
>
> 5. [J.D.] was subsequently transferred to Riley Children's Hospital where she underwent a skeletal survey bone scan, Heat CT scan, MRI scan of the brain, and genetic blood testing. The results of the skeletal survey indicated that [J.D.] had had five broken bones rather than just the left femur. Each femur was broken, her right distal tibia was described by Dr. Hibbard as a "corner fracture" caused by a violent jerk or yank, and both shoulders were "bucket breaks" where the arm bone was pulled out of the socket.
>
> 6. At Riley Hospital, Jennifer M. Johnson told [Mother] that she could come in and see [J.D.], and [Mother's] reply was "I'm smoking here."
>
> 7. Mother later commented to Jennifer Johnson that "This is the worst decision that I've ever made." When asked by Jennifer if she meant getting [J.T.] help at Riley, [Mother] indicated yes because [CCDCS] is

[2] We note that because CCDCS originally filed termination petitions for the children under separate cause numbers, the juvenile court issued separate termination orders for each child. Each order, however, is identical except for the names and captions. This Court ordered the parents' separate appeals consolidated on September 19, 2008.

getting involved.

8. The . . . family had a prior history with the Boone County Department of Child Services when their son, [D.D.] . . . [was] removed from the home at almost the exact age for a subdural hematoma and a completely bruised ear, injuries consistent with Shaken Baby Syndrome. [D.D.] was [in] foster care for about one year, and many services were provided to the family. No explanation was ever discovered for [D.D.'s] injuries.

9. Once the additional injuries were found at Riley Hospital, a CHINS petition was filed for the safety of both children. Both children were removed from the home by court order on June 13, 2006.

10. [Mother] was arrested in . . . 2006 for Battery . . . and Neglect of a Dependent . . . . She was incarcerated for about thirteen months before she plead guilty to Neglect of a Dependent . . . and received a two[-]year executed sentence. During that time[,] she completed an anger management class on February 7, 2007; however, shortly thereafter, she was charged with Battery on another inmate, a [c]lass A misdemeanor[,] for which she received a 30 day executed sentence.

* * *

12. After [Mother] got out of jail, one hour supervised visits were started. She never requested that they be increased. On May 21, 2007, a visit had to be ended when [D.T.] spit in [Mother's] face. She told him, "Be good, you don't want me to get that mean." He said, "No!" . . . and he spit in her face again. She then grabbed [D.D.'s] hands and when he spit again in front of several people, she said, "I'm going to beat your butt." At that time, the visit had to be cancelled.

13. On 5-31-07 during a visit at TPA Park, [J.D.] fell off a ride while [M]other was attending to [D.D.]. Mother's comment was, "eat dirt, and get some worms. I need a leash for both of them." On two occasions, once at the park and once at Wendy's, [J.D.] almost ran into the roadway under [M]other's care and [J.D.] was endangered. The home-based worker testified that [M]other rarely checked the children's diapers, and [M]other had a difficult time handling two children.

14. [Father] was cooperative at first with [CCDCS]. He completed a basic Red Cross First Aid Class, and he obtained employment . . . . The family case manager testified that visits went so well that they were extended to three hours per week, twice a week. By that time the

parents had separated. It was hoped that [Father] could become a single parent for the children. [Father] could handle one child at a time, but when the hours were extended, he became stressed with both children. Then in December 2006, [Father] disappeared for about eight months until August 2007. He apparently lost his job and failed to tell the [family case manager]. He failed to visit with the children at all during this eight[-]month period. He lived in several residences, was unemployed, and much of the time[] he did not have a telephone.

15. The home-based worker testified that [Father's] home was originally not baby-proof due to electrical cords and that [Father] left [J.D.] in the car seat for long periods of time during the visit. Another time, when she explained that [J.D.] could choke or gag on her cereal the way he was holding her, he became defensive. Once when [D.D.] threw his glasses, [Father] got physically mad and hovered over him, causing [D.D.] to cower in fear. Evidence was also presented that [Father] "head-butted" [D.D.] while playing. Many times when he had the children, they were sent back to the foster parents soaked because [F]ather did not check their diapers. [Father] told [J.D.] that she "reminds me too much of her mother." Father also never purchased a winter coat for [J.D.] although he stated several times that he would.

16. During this time, [Father] chose to take up with another woman and start another family although many times he was not providing for his current family.

17. The [family case manager] testified that both parents were stagnant fifteen months after the removal, and that neither parent could show compliance with the case plan or even make a basic showing that they could even meet the children's basic needs of food, shelter, and clothing. Visitation had not progressed beyond one hour per week supervised visitation.

18. The [family case manager] testified that a continuation of the parent-child relationship posed a threat to the well[-]being of the children. As evidence, she pointed to the lack of bonding, the fact that the parents did not get along with each other, that [Father] told [J.D.] that she "reminded him too much of her mother," and the fact that both children had suffered severe injuries that could not be explained either time by either parent except to possibly blame it on the other parent.

19. Both the [family case manager] and the foster mother testified that it was in the best interest to terminate parental rights. . . . The foster mother gave concrete examples of behaviors of the children that she

> thought were affected by the parent[s'] visitation. [J.D.] was clingy and fussy when both parents visited. [D.D.] was pulling his hair out, pulling his penis, biting himself, and hitting his head on objects. This behavior ceased while [M]other was in jail. When visits started again, so did the behaviors. The same therapist who had seen [D.D.] in Boone County commented that he was shocked at the regression. The foster mother also testified that after [F]ather stopped visiting in December 2006 . . . [D.D.] became a totally different child[.] [H]e quit spitting[,] he listened[,] he quit pulling hair[,] he quit repeating words[,] he was more loving[,] and he was calmer. This too ended with renewed visitation.
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> * * *
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> 21. In addition, the Court would note the testimony and report of the Guardian ad Litem in this matter. The GAL strongly recommended the termination of the parental rights as being in the best interest of the children. . . . He could not in good conscience recommend a return of the children, both of whom suffered serious injury without any explanation under the care of these parents. . . . The physical and emotional health of these children requires that the parental rights of both parents be terminated.

Appellant-Father's Appendix at 16-21. Our review of the record leaves us convinced that clear and convincing evidence supports the findings set forth above. These findings, in turn, support the juvenile court's ultimate decision to terminate Mother's and Father's parental rights.

The record discloses that Mother and Father have been unable to provide a safe and stable home environment for D.D. and J.D over a prolonged period of time. Mother and Father both have a history of involvement with the Department of Child Services beginning with D.D., when he, also at the tender age of three-months-old, was found to be suffering from potentially life-threatening injuries that occurred while D.D. was in the care and custody of his parents. Moreover, Mother pleaded guilty to neglect of a dependent resulting in bodily injury arising from the circumstances surrounding J.D.'s injuries.

By the time of the termination hearing, both parents had failed to achieve most of the dispositional goals set throughout the CHINS proceedings. For example, neither Mother nor Father had participated in parenting classes or nutrition classes. Father had completed a first-aid class offered through the Red Cross; however, he had not attended an anger management class or individual counseling. Mother, on the other hand, had not participated in a first-aid class or in individual counseling. Mother had participated in an anger management class while she was incarcerated. However, shortly after completing the class, she was involved in a physical altercation and was later convicted of misdemeanor battery.

Also significant is the fact that, at the time of the termination hearing, neither parent had obtained a safe and stable home environment, nor had either parent acquired enough stability to provide for even the most basic needs of the children, including such things as food, clothing, and shelter. Finally, we observe that neither Mother nor Father had progressed to unsupervised visitation. In fact, neither parent had progressed enough in their parenting abilities to be granted increased visitation from the original schedule of one hour of supervised visitation per week.

Although we acknowledge Father initially participated in services following the removal of the children by obtaining employment, completing first aid training through the Red Cross, and successfully participating in supervised visitation to the extent that visitation was briefly increased to two times per week for three hours a visit, the record reveals that as soon as he was allowed increased visitation with both children, Father began to struggle and "show signs of stress." *Transcript* at 53. Father soon thereafter moved from his residence and ceased all communication with CCDCS for approximately eight months.

At the time of the termination hearing, approximately one-and-a-half years had passed since the initial removal of the children from the family home, yet there was no significant overall improvement of the conditions leading to their removal by either parent. In fact, Johnson testified that she had not "seen progression" with the parents' case for over fifteen months and that the case was "stagnant." *Id.* at 63. When asked if she believed that continuation of the parent-child relationships posed a threat to the children's well-being, Johnson answered in the affirmative and stated:

> There are several reasons. . . . [T]his was not an easy decision. I don't file to terminate on any parent without heavy thought. . . . I believe we've given the parents[,] both parents[,] ample time to show their commitment to these children. . . . [T]heir commitment has not been consistent. . . . I'm concerned about the bond between not only the parents and the children but the children and their parents. . . . [B]ut also that this is a family that has a history of abuse. Abuse that required medical attention.
>
> * * *
>
> And the medical records suggest[] that [J.D.] suffered abuse over an extended period of time because her broken bones were in various stages of healing. So this was not a one[-]time out of anger, or on accident injury. This was a pattern of behavior that brought multiple broken bones. Bones that don't break easily. She had genetics done. She does not have brittle bone disease. There was no other explanation for these injuries. And [D.D.] had severe head trauma[,] too[,] that were in various stages of healing. So[,] it is uh definitely concerning to me . . . . I'm not sure that the parents received any intervention or counseling or therapy that would suggest that they've internalized the danger that these children were placed [in]. . . . And . . . [it] concerns me that there was (sic) they were minimizing the injuries. And uh the extent [of] these were life[-]threatening injuries to both children. And . . . I'm concerned that if they were to be reunified, there would be recurrence of maltreatment.

Id. at 71-72, 73-75. Similarly, Guardian ad Litem Ben Flora emphatically recommended termination, stating "[J.D.]'s medical history speaks for itself." *Id.* at 569. Flora further testified there was "nothing to possibly recommend . . . other than termination of [parental]

rights" for both parents. *Id.* at 570.

As stated previously, when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. *In re E.S.*, 762 N.E.2d at 1290. Moreover, where there are only temporary improvements, and the pattern of conduct shows no overall progress, the court might reasonably infer that under the circumstances, the problematic situation will not improve. *In re A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). CCDCS presented ample evidence to establish that Mother and Father engaged in dangerous and negligent behavior that greatly endangered the lives of D.D. and J.D, both of whom suffered serious, unexplained injuries while in the parents' care. Moreover, by the time of the termination hearing, Mother's and Father's home environments remained unstable, and neither parent's ability to safely parent the children had significantly improved.

Based on the foregoing, we conclude that there is clear and convincing evidence supporting the juvenile court's determination that continuation of Mother's and Father's parental relationships with D.D. and J.D. poses a threat to both children's well-being.[3] *See In re A.I.*, 825 N.E.2d 798 (Ind. Ct. App. 2005), *trans. denied* (concluding court properly determined parents posed threat to child's well-being although no specific testimony that either parent had physically abused child). This finding supports the court's ultimate decision to terminate both Mother's and Father's parental rights.

[3] Having concluded clear and convincing evidence supports the juvenile court's determination that continuation of Mother's and Father's parental relationships pose a threat to the children's well-being, we need not consider whether CCDCS also proved by clear and convincing evidence that there is a reasonable probability the conditions resulting in the children's removal will not be remedied. *See In re L.V.N.*, 799 N.E.2d at 69.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur