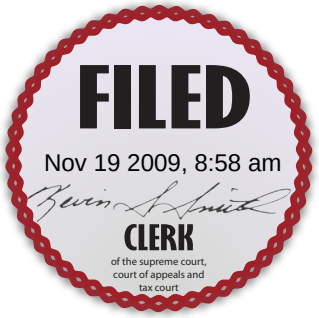

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF R.B.,	)	
R.D. (FATHER),	)	
Appellant-Respondent,	)	
vs.	)	No. 49A05-0904-JV-184
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner,	)	
and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem)	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Danielle P. Gaughan, Magistrate
Cause No. 49D09-0704-JT-15638

November 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

R.D. (Father) appeals the involuntary termination of his parental rights to his son, R.B. Father challenges the sufficiency of the evidence supporting the juvenile court's judgment.

We affirm.

Father is the biological father of R.B., born on December 28, 2005.[1] The facts most favorable to the juvenile court's judgment reveal that on or about December 29, 2005, the Indiana Department of Child Services, Marion County (MCDCS), received a report that R.B. was born testing positive for cocaine. MCDCS case worker Steffie Pithoud initiated an investigation by making an unannounced visit to the hospital where she spoke with Mother, R.B.'s sole legal and custodial parent. While at the hospital, Mother admitted to having a substance abuse problem and to using cocaine while pregnant. Father, who was not married to Mother, was also present at the hospital. Father acknowledged that he might be the biological father of R.B. Father refused, however, to provide Pithoud with any additional contact information, such as his address or social security number. Based on her investigation, Pithoud took R.B. into emergency protective custody and informed both parents that an initial child in need of services (CHINS) hearing would be held on December 30, 2005. Pithoud also provided both parents with the time and location of the hearing.

On December 30, 2005, an initial hearing on the MCDCS's CHINS petition took place

[1] The parental rights of R.B.'s biological mother, Latrice B. (Mother), were involuntarily terminated by the trial court in its March 2009 termination order. Mother does not participate in this appeal. Consequently, we shall limit our recitation of the facts to those pertinent solely to Father's appeal.

as to Mother. Father did not appear for the hearing and his whereabouts were unknown. Mother admitted to the allegations contained in the CHINS petition and the juvenile court subsequently adjudicated R.B. a CHINS. The juvenile court also ordered that R.B. be temporarily placed in foster care upon his discharge from the hospital. Following a dispositional hearing in January 2006, the juvenile court issued an order formally removing R.B. from Mother's care.

After completing an Affidavit of Diligent Inquiry, the MCDCS was eventually able to locate an address for Father and served him with a summons and notification of rights. On April 26, 2006, the juvenile court commenced an initial hearing on the MCDCS's CHINS petition as to Father. Father, who had recently become incarcerated at the Marion County Jail for failure to pay court-ordered child support for one of his four older biological children, was transported from the jail to attend the hearing. Father denied the allegations of the CHINS petition. The juvenile court thereafter appointed Father a public defender and ordered Father to complete DNA testing. Father was also granted supervised visitation with R.B. effective upon Father's release from incarceration.

Father was released from the Marion County Jail in May 2006. A fact-finding hearing on the CHINS petition was eventually held on July 5, 2006. Father appeared and was represented by counsel. At the conclusion of the hearing, the juvenile court adjudicated R.B. a CHINS.

Following a dispositional hearing in August, the juvenile court formally removed R.B. from Father's care and ordered that he participate in a variety of services designed to

facilitate reunification with R.B. Among other things, Father was ordered to maintain contact with his MCDCS case manager, secure and maintain a legal source of income and suitable housing, participate in a parenting assessment and any resulting recommendations, and successfully complete home-based counseling along with any recommendations made by the home-based counselor.

Upon his release from incarceration, Father began participating in court-ordered services. For example, Father established paternity and began visiting with R.B. Father also completed a parenting assessment. Father's participation in services, however, was not always consistent. Although referred to Community Addiction Services of Indiana, Inc. (CASI), for an intensive out-patient drug treatment program (IOP) in September 2006, Father initially refused to participate in the IOP and did not complete the eight-week program until April or May of 2007. With regard to housing, following the birth of R.B. Father bounced between living with various family members and friends and staying at hotels until his incarceration in March 2006. After his release from incarceration in May 2006, Father continued his pattern of staying with family members and friends for short periods of time for over a year. In April 2007, the MCDCS filed a petition for the involuntary termination of Father's parental rights due to his failure to progress in services.

In August 2007, Father began working with St. Vincent New Hope home-based counselors Bruce Joray and Sandy Taylor. Shortly thereafter, Father's visitation with R.B. was moved from Giant Steps to his mother's (Grandmother's) home and was supervised primarily by Taylor. Joray, on the other hand, worked with Father to develop a plan for

accomplishing various dispositional goals such as obtaining stable housing and employment, finding reliable transportation for Father and R.B., developing a budget, and making a safety plan. Initially, Father's participation in appointments with Joray was very sporadic, as Father missed approximately half of the scheduled visits for the first several months. Although Father's participation improved significantly at various times, by July 2008, Father's compliance had again become sporadic.

With regard to Father's housing and employment, in November 2007, Father began living at the Wildwood Village Apartments. Father maintained this apartment for approximately nine months. In June 2008, however, Father began to struggle with meeting his financial obligations. Father also was fired from his job sometime in late July or early August 2008. Upon learning of his financial situation, the MCDCS attempted to help Father by paying part of his rent in July and August of 2008. Despite this help, Father was unable to pay his rent in September and October and was therefore evicted. After moving out of his apartment in October 2008, Father returned to his habit of staying with friends and family members. At the time of the termination hearing, Father still had not secured independent housing and remained unemployed, having only worked five days with a temporary agency since August 2008.

Although Father did not participate in visitation prior to his incarceration in March 2006, shortly after his release, Father began attending supervised visits with R.B. at Giant Steps. Visits were later moved to Grandmother's house. After obtaining his own apartment in November 2007, Father's visits with R.B. were moved to his apartment, and quickly

progressed to unsupervised visits.

Notwithstanding Father's progression in visitation with R.B., once the visits were moved to Father's apartment, problems began to arise. For example, Father attempted to cancel several of the first in-home visits. On one occasion in December 2007, Father was not present when the foster parents attempted to drop off R.B. for a scheduled visit and the foster parents had to pick up Father from work for the visit to take place. Immediately prior to another scheduled visit in December 2007, Father was found locked out of his apartment when R.B. arrived for his visit. Taylor, who had transported R.B. to Father's apartment, offered to move the visit elsewhere. Father declined this offer and insisted on continuing to try to gain access to his apartment. Maintenance was eventually called and the lock was drilled open. When Father still could not enter the apartment because the safety chain was latched, he realized his sister, who, unbeknownst to the MCDCS had recently been released from incarceration and was staying with Father, was still inside the apartment. Father became very angry and began yelling for his sister to open the door. When she eventually let Father inside, a heated argument ensued, and R.B. became so upset that Taylor cancelled the visit.

By February 2008, Father's visitation privileges had reverted to four-hour supervised visits. In March 2008, Father tested positive for marijuana. Returning to unsupervised visits was therefore further delayed until Father could produce two successive drug screens. By May 2008, Father's visitation privileges had again progressed to unsupervised visits. Morever, Father spent many of his "visits" at work while R.B. was left in Grandmother's

care. In addition, during several of these occasions, case workers were unable to locate R.B. or Grandmother. The MCDCS made repeated requests of both Father and Grandmother to keep the caseworkers apprised of their whereabouts when R.B. was visiting, but these requests were to no avail. Father's continuing non-compliance with visitation rules resulted in a decline in visits in July 2008, as well as a reversion to supervised visits. In August 2008, Father missed a schedule visit with R.B. because he had been arrested and incarcerated on several charges, including battery, following an altercation with a long-time female friend. Joray later learned a gun had been present during the altercation. At the time of the termination hearing, Father's visitation privileges remained restricted to weekly supervised visits at Giant Steps.

Returning to the procedural history of the case, a fact-finding hearing on the MCDCS's involuntary termination petition originally filed in April 2007 was initially set for September 11, 2007. The MCDCS, however, filed a series of motions to continue the termination hearing, due at least in part to Father's then-regular participation in home-based counseling services and resulting "positive reviews." *Appellant's Appendix* pp. 46, 48, 50, 52, 58, 60, 75, and 77. Father's successful participation in services, however, was not maintained and a three-day fact-finding hearing was eventually held on November 3, 2008, November 10, 2008, and November 17, 2008. At the conclusion of the termination hearing, the juvenile court took the matter under advisement. On March 2, 2009, the juvenile court issued its judgment terminating Father's parental rights to R.B. This appeal ensued.

Father asserts on appeal that the juvenile court's judgment is clearly erroneous. Specifically, Father claims the MCDCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in R.B's removal from his care will not be remedied. In so doing, Father claims his "inadequacies, to the extent they existed, were the product of his recent unemployment and poverty and easily could be remedied through new employment or assistance from [the MCDCS]." *Appellant's Brief* p. 13. Father also claims the MCDCS "abandoned serious reunification efforts" following his 2008 arrest. *Id.* Father therefore contends that the juvenile court committed reversible error because its termination order was "premature and based on improper considerations." *Id.*

We begin our review by acknowledging 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 (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 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*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a 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.

To terminate a parent-child relationship, the State is required to allege and prove, among other things, that 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 . . . .

I.C. § 31-35-2-4(b)(2)(B). The State must establish these allegations by clear and convincing

evidence. I.C. § 31-37-14-2 (2008); *see also Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232 (Ind. 1992).

We pause to point out that the juvenile court's judgment did not contain a finding indicating that continuation of the parent-child relationship poses a threat to R.B.'s well-being. Indiana Code § 31-35-2-4(b)(2)(B), however, is written in the disjunctive. The juvenile court was therefore required to find by clear and convincing evidence only that one of the two requirements of subsection (B) had been met before issuing an order to terminate Father's parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003).

In determining whether there is a reasonable probability the conditions resulting in a child's removal or continued placement outside the family home will be remedied, a 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). Pursuant to this rule, courts have properly considered 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. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. The juvenile court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally,

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 deciding there is a reasonable probability the conditions resulting in R.B.'s removal or continued placement outside Father's care will not be remedied, the juvenile court made the following pertinent findings:

> 18. The CHINS court ordered [Father] to stay in contact with his case manager, secure and maintain a legal and stable source of income, obtain and maintain suitable housing, participate in and successfully complete a home[-]based counseling program and successfully complete any recommendations made by the home[-]based counselor, complete a parenting assessment and complete all its recommendations, complete parenting classes, and establish paternity of [R.B.].
> 19. [Father] does not have stable housing. When [R.B.] was born[,] [Father] was living with his brother . . . for about a month . . . . He then stayed in and out of different hotels and in homes of friends[,] but he never stayed in one place for more than a week . . . . [Father] was in jail for failure to pay child support from March of 2006 until May of 2006. . . . In November of 2007, [Father] moved into an apartment . . . . He lived in that apartment until October of 2008[,] but had to leave because he had not paid his rent. [The MCDCS] paid part of his July and August rent but [Father] could not pay for September or October. At the time of trial, [Father] was again living with different friends and family for short periods of time.
> 20. [Father] acknowledges that he has no home . . . .
> 21. [Father] does not have stable employment. He lost his job in August of 2008 and has not had stable employment since. At the time of the first da[y] of trial on November 3, 2008, [Father] had worked approximately 5 days since August 1, 2008.
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> * * *
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> 39. There is [a] reasonable probability that the conditions that resulted in [R.B.'s] removal or the reasons for placement outside the home of [Father] will not be remedied. [Father] obviously loves his son and their relationship is important to him. [Father] cannot, however, provide a stable and secure home environment for [R.B.] on a

> consistent full-time basis. [Father] has no home, no income, and no realistic plan for how he will provide for [R.B.]. [Father] has 4 other children who he never lived with and never financially supported. He has been in jail for failure to pay child support and is $22,000 in arrears with regard to one child for whom he is court[-]ordered to pay. Aside from the apartment that [Father] had for 9 months in 2007 and 2008, he has had no home since 2003 and lives with different friends and family from week to week. Though [Father] might be able to be an adequate non-custodial visiting dad who pays child support when he is able, he has not demonstrated the ability to parent full[-]time and provide [R.B.] with a consistent and stable home every single day. When the CHINS petition was filed[,] [Father] was not able or willing to provide a stable home for [R.B.]; at the time of the termination trial, almost three years later, he was still not able to provide a stable home for [R.B.].

Appellant Appendix at 21-24. Our review of the record leaves us convinced that clear and convincing evidence supports the court's findings set forth above. These findings, in turn, support the juvenile court's ultimate decision to terminate Father's parental rights to R.B.

The record discloses that Father has been unable to consistently provide a stable home environment for R.B. over a sustained period of time. Although Father did accomplish several of the juvenile court's dispositional goals, such as completing parenting classes and a drug treatment program, by the time of the termination hearing, Father was no longer regularly attending visits with R.B., had failed to successfully complete home-based counseling, had been without stable employment for several months, and was admittedly homeless. Testimony from various case workers further illustrates Father's sporadic participation in services and current inability to properly care for R.B.

Joray acknowledged that Father exhibited "periods of stability." *Transcript* at 152. Nevertheless, during the termination hearing, Joray testified that he could not recommend reunification at that time because Father had never "restablized" since losing his job. *Id.* at

152. Joray also stated he was concerned with how Father's "hectic lifestyle" would impact R.B. *Id.* at 174. When asked whether the goals pertaining to the process of transitioning R.B. back into Father's home were "essentially . . . exactly where you were in August 2007[,]" Joray answered, "Exactly, yes." *Id.* at 178. Similarly, in recommending termination of Father's parental rights, Guarian ad Litem Maude Glore testified that Father "just doesn't seem to be invested in providing a safe place to live and [in] taking care of [R.B.]." *Id.* at 182. Glore further testified that since she had been on the case, she had "not seen any real investiture of [Father] to have a permanent job [or to] provide housing for [R.B.]." *Id.* at 395. We have previously explained that 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).

Also significant, at the time of the termination hearing, Father's visitation privileges had reverted to the same status that existed at time of R.B.'s initial removal, namely, weekly supervised visits at Giant Steps. When asked whether she could recommend that Father be given custody of R.B., Taylor answered in the negative and further explained:

> Throughout this process[,] [Father] has never shown consistency with his want for his son. When we can catch [up with] him, he's been able to show us what we needed to see[,] but it's never lasted where we could progress above a couple of months of unsupervised [visitation]. . . . [I]'ve never seen where I thought [Father] was using (sic) [R.B.] as his main focus. . . . [T]here was always something else to take his focus away from [R.B.]."

Id. at 278. We have previously stated that "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." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*.

As previously explained, a juvenile court must judge a parent's fitness to care for his or her children *at the time of the termination hearing*, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Although it is readily apparent from the record that Father loves R.B. and has, at various times, successfully progressed in services, Father nevertheless has been unable to demonstrate an ability to provide R.B. with a consistently stable home environment, thereby leaving the conditions that resulted in R.B.'s removal from Father's care largely unchanged. This is true despite Father having received approximately three years of extensive services designed to facilitate his reunification with R.B. "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d at 372.

Based on the foregoing, we conclude that clear and convincing evidence supports the juvenile court's determination that there is a reasonable probability the conditions leading to R.B.'s removal or continued placement outside Father's care will not be remedied. Father's arguments on appeal, emphasizing the services he completed as opposed to the evidence cited by the juvenile court in its termination order, amount to an invitation to reweigh the evidence, which we may not do. *D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*.

This court will reverse a termination of parental rights "'only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made.'" *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d at 1235). We find no such error here.[2]

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.

[2] Although not specifically articulated nor supported by citation to authority, Father states in the "Conclusion" of his Appellant's Brief that the MCDCS "also failed to prove that continuation of the parent-child relationship was not in R.B.'s best interest[s]." *Appellant's Brief* at 32. In failing to support his argument with cogent reasoning or citation to authority, as is required by our appellate rules, Father has waived appellate review of this issue. *See* Ind. Appellate Rule 46(A)(8)(a). Waiver notwithstanding, we note that the record reflects that the juvenile court's findings pertaining to R.B.'s best interests, including its findings R.B is "happy and healthy" in his current pre-adoptive foster home, has a "secure attachment" to his foster parents but not to Father, refers to his foster parents as "mommy" and "daddy," and needs permanency in a stable and loving home, are supported by the testimony of the GAL and MCDCS case manager and other service providers. *Appellant's Appendix* at 24. We therefore find no error. *See M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000) (stating that recommendations of case manager and child advocate to terminate parental rights, in addition to evidence that conditions resulting in removal will not be remedied, are sufficient to show by clear and convincing evidence that termination is in child's best interests).