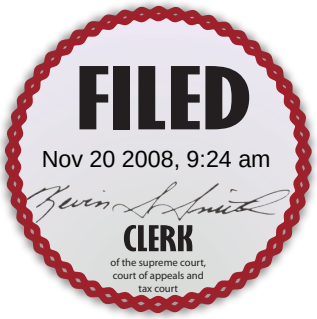

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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF K.L., Minor Child,	)	
MICHAEL LACEFIELD, (Father)	)	
Appellant-Respondent,	)	
vs.	)	No. 03A01-0804-JV-00158
INDIANA DEPARTMENT OF CHILD SERVICES, LOCAL OFFICE IN BARTHOLOMEW COUNTY,	)	
Appellee-Petitioner,	)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT – JUVENILE DIVISION
The Honorable Stephen R. Heimann, Judge
The Honorable Heather M. Mollo, Referee
Cause No. 03C01-0507-JT-1239

November 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael Lacefield ("Father") appeals the involuntary termination of his parental rights to his daughter, K.L., claiming the Bartholomew County Department of Child Services ("BCDCS") failed to prove (1) that the conditions resulting in K.L.'s removal or continued placement outside his care will not be remedied and (2) that continuation of the parent-child relationship poses a threat to K.L.'s well-being. Concluding that the juvenile court's judgment terminating Father's parental rights to K.L. is supported by clear and convincing evidence, we affirm.

Facts and Procedural History[1]

Father is the biological father of K.L., born September 8, 1994. The facts most favorable to the judgment reveal that the BCDCS initially became involved with K.L. and her family on July 19, 2002, when it received a report from K.L.'s mother, Melissa Lacefield-Caplinger ("Mother"), that K.L. had been sexually molested by Father. At the time, Mother had primary physical custody of K.L., and Father exercised visitation. Father denied the allegation and claimed Mother's boyfriend was the perpetrator. The BCDCS also received reports that Father had been drinking alcohol while K.L. was in his

[1] The Bartholomew County Court Reporter failed to adhere to the appellate rules in compiling the transcript, thereby greatly frustrating our efficient review of this case. Specifically, there was no table of contents (Ind. Appellate R. 28(A)(8)), there was no title page on any of the five separate volumes (Ind. Appellate R. 28(A)(7)), there were no header or footer notations indicating where a witness's direct, cross, or redirect examination began (Ind. Appellate R. 28(A)(4)), and there was a "sticky note" attached to the cover of the first volume indicating that the pages of the entire first volume were out of sequential order (Ind. Appellate R. 28(A)(2)). This complete disregard of the appellate rules is not well received. The Bartholomew County Court Reporter is hereby admonished and reminded of its obligation to properly prepare the transcript in accordance with our appellate rules.

care during visitation and that Father had driven a car while he was under the influence of alcohol when K.L. was a passenger.

The BCDCS took K.L. into emergency protective custody and placed her in foster care. A detention hearing was held on July 22, 2002, and a status hearing was held shortly thereafter on July 25, 2002. Father appeared at the status hearing intoxicated and was arrested for public intoxication immediately following the hearing. Father remained in jail until the end of August 2002. Eventually, both parents admitted K.L. was a child in need of services ("CHINS").[2]

On March 26, 2003, the juvenile court entered a dispositional decree directing Father to participate in a variety of services in order to achieve reunification with K.L. Father was ordered to, among other things: (1) participate in a psychological assessment and complete all resulting treatment recommendations; (2) submit to a substance abuse evaluation and follow all recommended treatment services; (3) maintain adequate housing and employment; (4) participate in individual and family counseling; (5) exercise regular visitation with K.L.; and (6) demonstrate appropriate parenting skills.

Although the BCDCS initially focused its reunification efforts on Mother, Father nonetheless cooperated with service providers both before and after the dispositional hearing. For example, in October 2002, Father submitted to a psychological evaluation with Dr. Jill Christopher, a clinical psychologist with Christopher and Associates. At the

[2] For several years, Mother participated in services, and reunification with K.L. was anticipated. However, concerns regarding Mother's inability to overcome her drug addiction and her involvement with abusive men eventually caused the BCDCS to refocus its reunification efforts on Father instead of Mother. On May 7, 2007, the juvenile court granted Mother's request to voluntarily relinquish her parental rights to K.L. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent to Father's appeal.

termination hearing, Dr. Christopher testified that she had conducted standardized testing and a clinical interview with Father. Dr. Christopher indicated that her testing revealed Father's intellectual functioning fell in the borderline or "slow learner" range. Tr. p. 26. She further reported that Father's responses to the MMPI II test were found to be similar to "people who have a lot of anger, resentment, and hostility." *Id.* at 28. Testing also indicated Father had some delusions of persecution and that he was likely depressed. Dr. Christopher testified that another area of concern was Father's denial of his use of alcohol in light of the fact she had received reports to the contrary.

Dr. Christopher's overall recommendation was that Father receive diagnostic counseling to further evaluate his personality and emotional state as well as counseling for parenting skills and strategies. Father subsequently participated in individual therapy. Additionally, in April 2003, Father completed a parenting class through Quinco Behavioral Services, having previously failed to successfully complete a different parenting class. Father also exercised regular visitation with K.L.

Despite Father's initial attempt at compliance, Father did not always follow court orders, and his successful participation in services was sporadic. For example, before the dispositional hearing held on December 11, 2002, Father violated the juvenile court's orders regarding communication with K.L. at her foster home and was found in contempt. In addition, concerns regarding Father's alcohol use and ability to control his anger repeatedly surfaced throughout the CHINS proceedings. One instance occurred before the dispositional hearing when Father attended a visitation with K.L. smelling of alcoholic beverage. A blood alcohol content ("BAC") test was administered, and

Father's BAC result was .0175 despite the fact Father was prohibited from using alcohol as a term of his probation. Father also admitted he had missed a visit with K.L. shortly after the dispositional hearing because he had been drinking. In addition, BCDCS case manager Carol Gwin testified that in May 2004 Father failed a BAC test administered by the probation department.

With regard to Father's anger issues, Peggy Bowman, K.L.'s therapist at Fresh Start, testified that K.L. had voiced concerns about Father's anger. Bowman further indicated that she, too, had personally observed Father's anger. Bowman stated Father would "get angry, blow up, then do well with us for a while." *Id.* at 57. Bowman described Father's behavior as a "continuous cycle" that never was resolved. *Id.*

In June 2005, during K.L.'s first unsupervised home visit with Father since her removal in 2002, Father disregarded well-established BCDCS rules, resulting in recommendations by Gwin and K.L.'s court-appointed special advocate ("CASA") that visitation immediately revert back to being supervised. Supervised visitation continued until March 2006. On July 6, 2005, the BCDCS filed a petition for the involuntary termination of both parents' parental rights to K.L., but continued to offer some services to Father. Father continued to participate in and successfully progress with court-ordered services and visitation. Consequently, on September 6, 2006, K.L. was placed in Father's physical custody and was provided with home-based services, including individual counseling.

Almost immediately after K.L.'s return to Father's care, however, school officials raised concerns regarding K.L.'s chronic tardiness and deficient hygiene. K.L.'s grades

also began to suffer. On December 14, 2006, K.L. reported to her teacher that Father had been physically abusing her. K.L. indicated that Father had kicked, slapped, and shoved her on multiple occasions during the preceeding several weeks. K.L. further stated that she was fearful of Father and did not want to return home. In response to K.L.'s report of abuse, the BCDCS immediately removed K.L. from Father's home and placed her in residential care at Youth Hope. Following her removal from Father, K.L. also reported that Father had been drinking alcohol during the time she had been in his care.

A fact-finding hearing on the BCDCS's petition for involuntary termination commenced on May 1, 2007. Father was present and represented by counsel. Additional evidentiary hearings were later held on May 3, June 12, October 30, December 4, and December 6, 2007.

During the evidentiary hearings, Diane Burks, a licensed clinical social worker and family counselor, testified she had evaluated both K.L. and Father in October 2004. Burks stated that her testing revealed Father had a major depressive disorder, generalized anxiety disorder, passive-aggressive personality disorder, and paranoid personality features. Burks further testified that she did not recommend reunification between K.L. and Father. In so doing, Burks explained that Father "has trouble with his thinking processes[,]" that he "does not have an internal process established to be able to process social information [and] behavioral information," and that Father "doesn't have very highly developed coping skills to be able to regulate his anger[.]" *Id.* at 119, 121.

Becki Williams also testified at the termination hearing, explaining that she had provided home-based services to Father three to four times a week for one year.

Williams further stated she was never able to decrease or discontinue her home-based services because Father had failed to reach a level of stability that would allow her to do so. As a result of Father's failure to progress in services, Williams was unable to recommend reunification.

Eileen Bennett was K.L.'s therapist following her removal from Father's home in 2006. Bennett supported the BCDCS's recommendation to terminate Father's parental rights to K.L. and indicated that she felt K.L. would be able to bond with another family. Bennett explained that K.L. needs a "safe, loving, consistent and predictable environment" as well as parents who are calm and can handle her emotional needs and behavioral problems. *Id.* at 359. Bennett further testified that she did not feel Father could provide K.L. with the environment that she required. In so doing, Bennett acknowledged the fact that Father had attempted to make the necessary changes, but she nevertheless felt that K.L.'s "needs and [Father's] abilities [do not] match up." *Id*. at 377.

Finally, BCDCS caseworker Gwin testified that Father admitted to her that while K.L. was in his care in 2006, he had hit her for throwing and breaking the television remote control, he had consumed alcohol on several occasions when K.L. was present, and he had taken K.L. to visit Mother despite court orders not to do so. She further stated that Father had experienced difficulties with maintaining employment throughout the CHINS proceedings and that Father had reported approximately nineteen different jobs with at least two periods of unemployment. Gwin also informed the court that Father had been in his current job for only approximately one week.

At the conclusion of the termination hearings, the juvenile court took the matter under advisement and on March 7, 2008, issued its judgment terminating Father's parental rights to K.L. This appeal ensued.

Discussion and Decision

This Court has long had a highly deferential standard of review in cases involving 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, 265 (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, 208 (Ind. Ct. App. 1999), *trans. denied*. Clear error is that which leaves us with a definite and firm conviction that a mistake has been made. *In re A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997).

Here, the juvenile court entered specific findings in terminating Father's parental rights. Where the court has entered findings of fact, we first determine whether the evidence supports the findings. *D.D.*, 804 N.E.2d at 265. Then, we determine whether the findings support the judgment. *Id.* A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *Id.* A judgment is clearly erroneous only if the findings do not support the juvenile 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, because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when the parents are "unable or unwilling to meet their parental responsibilities." *K.S.*, 750 N.E.2d at 836 (citing *L.S.*, 717 N.E.2d at 208). The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is therefore designed to be used only as a last resort when all other reasonable efforts have failed. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). However, a juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *Id*.

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

> (A) one (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * *
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code §§ 31-35-2-4(b)(2) and -8. 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). Moreover, if the juvenile court finds that the allegations in a termination petition described in section 4 are true, it shall terminate the parent-child relationship. I.C. § 31-35-2-8.

Father does not challenge the sufficiency of the evidence supporting the juvenile court's findings regarding (1) the length of time K.L. has been removed from Father's care, (2) whether termination is in K.L.'s best interests, and (3) whether the BCDCS has a satisfactory plan for the care and treatment of K.L., namely, adoption. Rather, Father argues on appeal that the BCDCS failed to satisfy its burden of proving by clear and convincing evidence either that the conditions resulting in K.L.'s removal will not be remedied or that continuation of the parent-child relationship poses a threat to K.L.'s well-being. Specifically, Father claims he "has demonstrated that he has fully complied with all that was required of him to permit him to continue to parent his child." Appellant's Br. p. 17. Moreover, Father argues that there was insufficient evidence supporting the juvenile court's judgment in light of the recommendations for reunification by two of K.L.'s CASAs.

Initially, we point out that Indiana Code § 31-35-2-4(b)(2)(B) is written in the disjunctive. It therefore only requires the juvenile court to find one of the two requirements of subsection (B) to be established by clear and convincing evidence. *See*

L.S., 717 N.E.2d at 209. Here, the juvenile court found both conditions had been met, that is, that the BCDCS proved by clear and convincing evidence both that there is a reasonable probability the conditions resulting in K.L.'s removal and continued placement outside Father's care will not be remedied and that continuation of the parent-child relationship poses a threat to K.L.'s well-being. We begin our review by considering whether sufficient evidence supports the former finding.

When considering whether there is a reasonable probability that the conditions resulting in a child's removal will not be remedied, the 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 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 children. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). Our review of the record leaves us convinced that the juvenile court's findings,[3] including its finding that there is a reasonable probability the conditions leading to K.L.'s initial removal and continued placement outside Father's care will not be remedied, are clearly supported by the evidence. These findings, in turn, support the juvenile court's ultimate decision to terminate Father's parental rights.

The record reveals that although Father initially participated in court-ordered services following K.L.'s removal from the family home in 2002 and at various times throughout the CHINS proceedings, the evidence clearly establishes that Father never

[3] We pause to commend the juvenile court on its extensive, detailed findings that were of great assistance in our review of this appeal.

consistently sustained his compliance despite numerous opportunities to do so. For example, Father submitted to psychological testing, completed a parenting class, participated in individual therapy, and exercised regular visitation with K.L. However, Father also (1) was found in contempt of court for violating court orders regarding communication with K.L. at her foster home, (2) repeatedly consumed alcohol, oftentimes in the presence of K.L., in violation of the juvenile court's orders and the terms of his probation, and (3) was unable to control his anger on multiple occasions in the presence of K.L. and several service providers.

Father has also never been able to maintain a safe and stable home environment for K.L. nor consistently demonstrated appropriate parenting skills. For example, during K.L.'s first unsupervised visit with Father, he impermissibly allowed another child to be present during K.L.'s visit and directed K.L. to lie to BCDCS service providers about his indiscretion. During this same visit, Father became involved in an altercation at the neighborhood pool while K.L. was present, which resulted in Father being banned from the premises. Later, in the fall of 2006, despite having progressed in services to the point that he was granted physical custody of K.L., she was again removed from Father's care after only three months when she informed her teacher that Father had kicked, slapped, and shoved her on multiple occasions during the preceeding several weeks. Father later admitted to "pinning" K.L. against a wall in a fit of anger over a grooming kit K.L. had been provided by her teacher. Tr. p. 236.

Further evidence of Father's inability to appropriately parent K.L. and provide her with a safe and stable home environment is found in Williams's testimony. Williams

informed the juvenile court that despite the fact she had provided home-based services to Father for approximately one year, both before and during K.L.'s return to Father's care in September 2006, Father was never able to demonstrate an appreciable level of progress that would allow for a decrease in the intensity of the services she was providing. Williams went on to explain that, normally, her involvement with a family would "taper off" and be completed within six months. *Id.* at 210. In this case, however, Williams stated she continued to work with Father three to four days a week for a full year because she felt "it was never, ever . . . appropriate for me to pull out and start reducing my time." *Id.* Father's inability to appropriately parent K.L. was also observed by school authorities at K.L.'s school who, immediately following K.L.'s return to Father's care in 2006, began to raise concerns due to K.L.'s chronic tardiness, falling grades, and lack of personal hygiene.

By the time of the termination hearing, Father was still unable to provide K.L. with a safe and stable home environment. Moreover, Father had failed to successfully complete a number of important court-ordered services. Specifically, Father had failed to complete a substance abuse program and to overcome his anger management issues. Father also had stopped taking his prescribed medications for depression and anxiety. In addition, Father, who had been ordered to pay $35.00 per week in child support, was thousands of dollars in arrears. By the time of the termination hearing, Father admitted that he had not had running water in his home since the summer of 2007 and that he was in the process of being evicted from his home for failure to pay rent. Finally, when asked whether she believed that the conditions leading to K.L.'s removal had been remedied,

Gwin answered in the negative and explained, "I think he has had . . . almost five (5) years of services and when we placed [K.L.] back in the home, then it was necessary for us to remove her [from] the home again because [Father] wasn't able to successfully parent her. . . . I don't see, at this point, that that would be any different if [K.L.] was placed back in the home today." *Id*. at 549.

As stated previously, the juvenile court was required to judge Father's fitness to care for K.L. at the time of the termination hearing. *J.T.*, 742 N.E.2d at 512. The court was also required to evaluate Father's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of K.L. by Father. *M.M.*, 733 N.E.2d at 13. Based on the foregoing, we conclude that the juvenile court's determination that there is a reasonable probability the conditions resulting in K.L.'s removal and continued placement outside of Father's care will not be remedied is supported by clear and convincing evidence, notwithstanding Father's intermittent periods of compliance. *See Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (concluding that a pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability the conditions will change), *trans. denied*; *see also In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (stating that where there are only temporary improvements and the pattern of conduct indicates no overall progress, a court might reasonably infer that under the circumstances, the problematic situation will not improve). Father's arguments to the contrary, including his reliance on the testimony of CASAs Sandra

McCoomer and Pam Shympkus, amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 265.

In considering the testimony of McCoomer and Shympkus, the juvenile court made the following pertinent finding:

> 50. Sandra McCoomer and Pam Shympkus were the two most recent Court Appointed Special Advocates for [K.L.]. Ms. McCoomer served on the case from mid-2006 until June 2007. Ms. Shympkus [began] serving as [K.L.'s] CASA in September 2007. Both reported that they believed that [K.L.] should be placed with [Father]. However, Ms. McCoomer acknowledged that [K.L.] was fearful of her father following her removal from the home in December 2006. . . . On cross-examination, Ms. McCoomer acknowledged that [K.L.] advised that she missed her cats and her room. She did not specifically advise that she wished to be with her dad. Ms. Shympkus advised that her recommendation was reunification with [Father]. Ms. Shympkus acknowledged that she had not talked with anyone involved in the case at the time [K.L.] was removed in December 2006. She had not talked with Becki Williams about the services she was providing. She had not talked to Eileen Bennett about [K.L.'s] welfare. She did not talk to Ms. Hendrickson about [K.L.'s] fears of her father. Ms. Shympkus advised that [K.L.] should be returned to [Father] because she will never give anyone else a chance to be her family. With the child now being thirteen, Ms. Shympkus requested that the Court reunify [K.L.] with her dad because that is what [K.L.] wants.

Appellant's App. at 113. The juvenile court was permitted to judge both McCoomer's and Shympkus's credibility and weigh their respective testimony against other significant evidence demonstrating Father's habitual pattern of conduct in failing to address his anger management problem, consistently take prescribed medication for his anxiety and depression, overcome his alcohol addiction, and provide a consistently safe and nurturing home environment for K.L. *D.D.*, 804 N.E.2d at 267. Thus, the juvenile court did not clearly err in determining that there is a reasonable probability that the conditions

resulting in K.L.'s removal and continued placement outside Father's care will not be remedied. Because we reach this conclusion, we need not address whether the BCDCS proved by clear and convincing evidence that the continuation of the parent-child relationship poses a threat to K.L.'s well-being. *See L.S.*, 717 N.E.2d at 209.

Affirmed.

KIRSCH, J., and CRONE, J., concur.