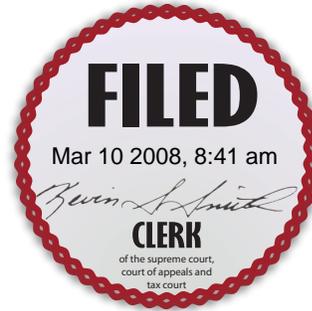


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE TERMINATION OF THE)
PARENT-CHILD RELATIONSHIP OF)
D.C. and A.C., minor children, and)
JUSTIN CARTER, their father,)
)
JUSTIN CARTER,)
)
Appellant-Respondent,)
)
vs.)
)
MADISON COUNTY DEPARTMENT OF)
CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 48A02-0710-JV-870

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Jack L. Brinkman, Judge
Cause Nos. 48D02-0702-JT-101, -102

March 10, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Justin Carter appeals the trial court's order terminating the parental relationship between Justin and his children, D.A. and A.C. Justin argues that there is insufficient evidence supporting the trial court's ruling. Finding no error, we affirm the judgment of the trial court.

FACTS

D.C. was born on October 22, 1998, and A.C. was born on February 15, 2002, to Justin and Misty Blu (Sweigart) Carter. In October 2002, Justin and Misty were married. At the time of the CHINS proceedings herein, they had separated and were in the process of dissolving the marriage.

On April 5, 2006, Madison County Department of Child Services (DCS) filed a petition alleging D.C., A.C., and another child in Misty's care to be Children in Need of Services (CHINS).¹ At the time of the filing of the petition, the children lived with Misty, and Justin's address was unknown. The petition alleged that Misty was reluctant to let a police officer and her case manager into her home, but after she eventually agreed to let them enter they observed the following conditions:

In the house there was dirty clothing, toys, trash and small objects thrown about the house. There were dirty dishes, pots and pans in the kitchen. There was old food sitting out on the stove and counter tops. The house had minimal food for the children to eat. The house has no gas for heat and no water. Misty was heating with two space

¹ The third child included in the CHINS petition has a different father and is not part of this appeal.

heaters. . . . The toilets were being used without being flushed due to broken water lines [and the officer and case manager] witnessed [A.C.] in a play pen drinking a bottle that appeared unsanitary. Further observation provided that [A.C.] was drinking spoiled milk from an unsanitary bottle. . . . [T]he children had poor hygiene, and lack of clean clothing. . . . [D.C.] has reported to school [personnel] that he did not have enough food to eat and that he is always hungry. . . .

Appellant's App. p. 15. DCS also removed the children from Misty's care at that time.

On June 22, 2006, the trial court found the children to be CHINS and ordered that they remain in foster care. It further ordered Justin to complete a parenting program and comply with visitation rules. Justin did not complete the parenting program and failed to visit with the children regularly. In September 2006, Justin was ordered to pay child support and in March 2007, he was ordered to complete a substance abuse evaluation and maintain regular employment. He did not pay child support or maintain regular employment, and although he insists he completed a substance abuse evaluation, he failed to provide a copy of the evaluation to DCS.

On February 28, 2007, DCS filed a petition to terminate Justin's parental rights. On June 26, 2007, the trial court held a hearing on the termination petition. At that time, Justin had been incarcerated for two months for, in his words, "failure to appear . . . contempt . . . uh . . . I ow[e] money that I was late on paying so they put out a warrant for me." Tr. p. 103. At the hearing, the case manager and guardian ad litem testified that they believed that termination was in the children's best interests. The children have resided with the same foster parents since their initial removal from Misty's care. They

have bonded with their foster parents, who plan to adopt them. On July 27, 2007, the trial court terminated Justin's parental rights. Justin now appeals.

DISCUSSION AND DECISION

Justin argues that there is insufficient evidence supporting the termination of his parental rights. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

- (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;
 - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (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).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and

social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

Here, Justin argues that DCS did not present sufficient evidence to support the conclusions that (1) there is a reasonable probability that the conditions that resulted in the children's removal will not be remedied; and (2) termination was in the children's best interests.

The record reveals that when the children were removed from Misty's care, Justin was not paying child support. His failure to pay child support continued unabated throughout these proceedings. At the time of removal, Justin did not have a suitable home for the children and was unemployed. At the time of trial, Justin did not have a suitable home for the children—in fact, he was incarcerated—and was unemployed. Between the filing of the CHINS petition and the termination hearing, Justin failed to complete court ordered parenting classes, visited with his children inconsistently, failed to ask the court that they be placed with him, and failed to provide a purported substance

abuse evaluation to DCS. Although he stated that he was involved in the children's lives at the time they were removed from Misty's care, he was either unaware of or not concerned about their deplorable living conditions, going so far as to dismiss the fact that his children had ringworm by saying, "all kids get ringworm." Tr. p. 118-19. Although Justin directs our attention to evidence in his favor, this amounts to a request that we reweigh the evidence and judge witness credibility—practices in which we do not engage when evaluating a trial court's order terminating a parent-child relationship.

We find that this evidence of Justin's fitness at the time of trial and habitual patterns of conduct clearly and convincingly proves that there was not a reasonable probability that the conditions resulting in the children's removal would be remedied and that reunification would pose a threat to their well being. Similarly, we find that this evidence—together with evidence that the children have bonded with their foster parents and thrived while in their care—establishes that it is in the children's best interests that the parental relationship be terminated.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.