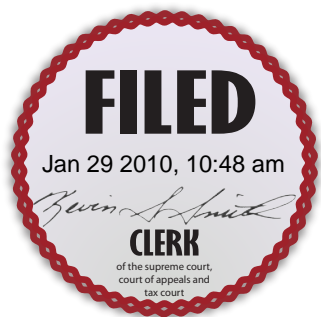


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
Ma.P. and Me.P., Minor Children, and)
M.P., Father,)
)
M.P., Father,)
)
Appellant-Respondent,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
)
Appellee-Petitioner.)

No. 82A05-0907-JV-377

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett Niemeier, Judge
The Honorable Jill Marcum, Magistrate
Cause Nos. 82D01-0803-JT-25, 82D01-0803-JT-26

January 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

M.P. (“Father”) appeals the involuntary termination of his parental rights to his daughters, Ma.P. and Me.P.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

Ma.P. was born April 1, 2005. On October 25, 2005, the Vanderburgh County Department of Child Services (“DCS”) took Ma.P. into protective custody because Father had been arrested on battery and possession of marijuana charges after a domestic dispute with Mother. At the time of Ma.P.’s removal, Father, age twenty-one, and Mother, age eighteen, were living together but were not married.

On October 26, 2005, a detention hearing was held and the trial court determined there was probable cause to believe Ma.P. was a child in need of services (“CHINS”). The trial court authorized her removal from the home, made her a temporary ward of DCS, and directed DCS to place her in foster care. On November 1, 2005, Ma.P. was adjudicated a CHINS.

DCS submitted a pre-dispositional report that indicated Father was unable to provide adequate supervision for Ma.P. based on his arrest for battery, his unstable housing situation, and his admitted substance abuse and anger management problems. After a dispositional hearing Father agreed to a parental participation plan to achieve reunification with Ma.P. The plan was incorporated into the dispositional order pursuant to which Father was to (1) establish paternity for Ma.P.; (2) successfully complete substance abuse treatment; (3) submit to drug screens as requested; (4) successfully complete individual and family counseling, as well as the Nurturing Program and the

¹ Mother voluntarily terminated her parental rights in February 2009 and is not part of this appeal.

Parenting Beliefs Program; (5) participate in a psychiatric evaluation and follow all resulting recommendations; (6) visit Ma.P. regularly; (7) obtain and maintain suitable housing and employment; and (8) refrain from domestic altercations and provide Ma.P. with a supervised, drug-free, and safe home environment.

Father participated in some court-ordered services. In March 2006, he completed an intake assessment for anger management at Lampion Center. He began attending weekly meetings with Kelly Pyle, a parent aide with Ireland Home Based Services, in May 2006. Pyle helped Father search for housing and employment and work on budgeting issues. Father established paternity of Ma.P., married Mother, and attended most of the case review and permanency hearings.

Father's compliance, however, was not consistent. He completed the intake assessment at Lampion Center, but did not go to five of the first nine weekly sessions and was discharged unsuccessfully from the program. Father reported he was using alcohol and marijuana in March 2006 and he was unemployed during most of the underlying proceedings. Still, on April 18, 2006, the trial court ordered DCS to transition Ma.P. back into the family home based on Father's overall progress.

On May 8, 2006, Ma.P. was returned to her parents' care, but the CHINS case remained open and the family continued to receive services. Ten days later, on May 18, 2006, Me.P. was born. On September 30, 2006, another domestic altercation occurred between Father and Mother. Father was arrested, but the children were allowed to remain in the family home with Mother. On October 14, 2006, Mother tested positive for cocaine. The children were detained on October 16, 2006, and DCS alleged Me.P. was

also a CHINS. The trial court adjudicated Me.P. a CHINS on October 25, 2006. After a hearing on November 22, the trial court ordered Father to continue the services previously ordered in Ma.P.'s CHINS case.

In October 2006, Father attempted suicide while suffering from depression. He was admitted to Evansville State Hospital for long-term in-patient psychiatric care. While there, he received intense therapy and continued to participate in court-ordered services through his treatment plan. Specifically, Father completed the Amethyst drug treatment program and drug court. He also participated in individual counseling and had regular visits with the children. Father was at Evansville State Hospital for approximately seven months until his release in June 2007.

When released, Father reunited with Mother and resumed services through DCS. Both Father and Mother began to progress in services and in maintaining a stable home environment. In December 2007, DCS family case manager Joanna Wiltsie arranged for Father and Mother to receive intensive reunification services through Ireland Home Based Services to prepare for the children's anticipated return to the family home. Father received individual therapy and family counseling from home-based counselor and therapist Mary Watson. Watson spent approximately twenty hours per week in the family home working with Father and Mother to address domestic violence, prevention of drug relapse, and maintenance of a safe home for the children.

On January 18, 2008, the children were returned to the family home. Intensive reunification services continued. On January 23, 2008, Father and Mother were involved in a domestic altercation during which Father purposefully dropped a computer monitor.

The police were called but no arrests were made. The following day, Watson met with Father to develop a safety plan to help Father control his anger and avoid domestic violence. Both parents were told they needed to learn how to resolve their marital disagreements without resorting to violence. Watson explained to Father and Mother the negative impact domestic violence has on a child's well-being, and she asked the parents to seriously consider a separation to alleviate the tension in the home and to provide the children with a more stable environment. The parents insisted on staying together but agreed to work with Watson.

On February 20, 2008, police came to the family home in response to a report that Father threatened to commit suicide after arguing with Mother. DCS case manager Wiltsie arranged to meet with Father and Mother to discuss the recurring domestic turmoil in the home. The parties also discussed whether Father and Mother intended to remain together as a couple; what, if any, changes needed to be made with regard to services for the family; and whether the children should be removed from the home. Father expressed his commitment to refrain from future domestic altercations and to ensure the children's safety, and it was decided the girls would remain in the home. Wiltsie told Father and Mother that if the domestic altercations continued, the children would be removed and DCS would seek involuntary termination of their parental rights.

The next day Father and Mother were involved in another domestic altercation. Mother asked the children's foster parents to pick up the children. Father did not want the children removed, but allowed the foster parents to take them. Later the same

weekend, the foster parents were unable to reach Father by telephone when Me.P. became ill and had to be taken to the hospital.

Due to the continuing domestic altercations in the home, the children were detained by DCS on February 25, 2008, and returned to foster care by court order on February 27, 2008. This was the third removal for Ma.P. and the second for Me.P. DCS sought involuntary termination of Father's rights to both children.²

At the time of the termination hearing, Father had divorced Mother, had obtained stable housing, was receiving disability income, was taking his depression medication as prescribed, and had maintained consistent visitation with Ma.P. and Me.P. However, Father had not completed anger management classes, had tested positive for marijuana on three occasions in 2008, and had not complied with multiple requests for drug screens in 2008. The trial court terminated Father's parental rights to Ma.P. and Me.P.

DISCUSSION AND DECISION

Father asserts the judgment terminating his parental rights to Ma.P. and Me.P. is not supported by clear and convincing evidence. Specifically, Father claims DCS did not prove (1) there is a reasonable probability the conditions resulting in the children's removal or continued placement outside Father's care will be remedied, (2) continuation of the parent-child relationship poses a threat to the children's well-being, and (3) termination of Father's parental rights is in the children's best interests.

² This was the second time DCS filed an involuntary termination petition as to Father and Ma.P. The first was filed in 2007, as is required by statute after a child has been removed from the family home for over fifteen of the most recent twenty-two months. *See* Ind. Code § 31-35-2-4.5. That petition was dismissed at the request of DCS because Father appeared to be progressing in services.

We apply a highly deferential standard when reviewing a termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). We do 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 therefrom that are most favorable to the judgment. *Id.*

The trial court made specific findings at the request of the parties. When a trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*; *see also Bester*, 839 N.E.2d at 147. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"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*, but the law provides for termination of those rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144, 149 (Ind. Ct. App. 2008). To terminate a parent-child relationship, the State must prove:

- (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

Ind. Code § 31-35-2-4(b)(2). The State must establish either (B)(i) or (B)(ii) and (C) by clear and convincing evidence. Ind. Code § 31-37-14-2; *see also Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992).

1. Conditions³

When determining whether there is a reasonable probability the conditions justifying a child's removal and continued placement outside the home 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*. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.*

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*

³ Father also asserts DCS did not prove the continuation of the parent-child relationship posed a threat to the children's well-being. Because Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive, the juvenile court needed to find by clear and convincing evidence only one of the two requirements of subsection (B). *See L.S.*, 717 N.E.2d at 209. Where, as here, the juvenile court found both, we may affirm if the evidence supports either. *See In re B.J.*, 879 N.E.2d 7, 22 n.4 (Ind. Ct. App. 2008), *trans. denied*. Because the evidence supports the finding the conditions had not been remedied, we need not review whether being with Father would have posed a threat to the children.

& Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The court may also properly consider the services offered to a parent, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* A department of child services is not obliged to rule out all possibilities of change; it need establish only a reasonable probability a parent's behavior will not change. *See In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007). "[A] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support 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 366, 372 (Ind. Ct. App. 2007).

The trial court found:

22. Father had been referred to Lampion Center for anger management classes in spring of 2006. He completed an intake assessment at Lampion Center on 3/31/06. Treatment goals were to identify positive ways to express and demonstrate skills for controlling anger, and to eliminate occurrences of disruptive behavior. Father missed five sessions, and his case at Lampion Center was closed on 9/8/06 due to his failure to comply with the program attendance policy. Father reported to service providers that he had completed an anger management program at the Evansville State Hospital during his hospitalization between October of 2006 and June of 2007. Father also received intensive reunification services beginning on December 22, 2007 and continuing into 2008 which targeted anger management and keeping the home safe for the children as goals for the father.

23. Father had an explosive outburst in February of 2008 in which he became angry, was verbally abusive to the mother, and dropped a computer monitor. This incident occurred while the children were in the father's care, and led to the children's final removal from the home.

24. During the pending CHINS matter, there were at least eight (8) altercations between the parents, with at least four (4) resulting in law enforcement being called to the family's location. The children were present during several of these incidents.

25. The father has demonstrated an ongoing inability to control his anger while in the presence of the children even after being offered anger management courses and intensive reunification services aimed at preventing violence in the home. Although violence in the home was not targeted at the children, violent altercations place children at risk of being harmed inadvertently, and also have an effect on a child emotionally. Kelly Pyle was Father's parent aide from May of 2006 through December of 2007. During that time, she addressed violence in the home as a concern that needed to be remedied. As part of her work with father, she discussed with him the fact that it was not appropriate for the children to witness the altercations which occurred between the parents. During Ms. Pyle's assignment as a parent aide, at least two altercations between the parents occurred.

26. Father's intensive reunification specialist, Mary Watson, also made Father aware of the negative effects that violence in the home can have on children, and yet Father engaged in these behaviors while the children were in the home. The father's continued inability to control his anger and ensure the children's safety poses a threat to the children.

27. The Father's involvement in altercations had an affect on multiple areas of his life. The parents were evicted from at least one home due to the fact that law enforcement had been called to the home in response to altercations involving the Father on so many occasions.

28. Father identified stressors which led to his anger as being financial issues and discord in his relationship with the child's mother. These are stressors which are likely to be present at times during a person's lifetime. Father's inability to appropriately cope with stressors that commonly occur place the children in danger of being exposed to violence and anger in the home if father's rights are not terminated.

29. Due to Father's admitted history of substance abuse and arrest for possession of marijuana at the time of the Department's initial involvement in 2005, Father was ordered to complete random drug screens through Hi Tech Investigative at the time of disposition. Father had multiple incidents of non-compliance with random drug screens both prior to and following the filing of the petitions to terminate parental rights. After the filing of the petitions to terminate parental rights, the father failed to call Hi Tech at least nine (9) times in response to attempts that were made to contact him to obtain a drug screen between March 13, 2008 and October 21, 2008. Father knew how to respond to attempts to contact in the past, indicating that these occurrences were willful failures to respond. Father also refused to submit to a drug screen for a Hi Tech employee on October 28, 2008.

30. In March of 2006, father reported current use of alcohol and marijuana. Father also reported that he had been using alcohol at the time of the altercation which led to [Ma.P.]'s initial removal in October of 2005.

Father tested positive for marijuana (THC) on March 11, 2008, March 14, 2008, and again on August 6, 2008.

31. Father previously participated in a two to three week in-patient treatment program for substance abuse when he was in the tenth grade. Father also reported receiving substance abuse education while hospitalized at the Evansville State Hospital for psychiatric treatment. Intensive reunification services provided to Father through Ireland Home Based Services from December of 2007 through February of 2008 also focused heavily on relapse prevention. Father indicated to the intensive reunification specialist that he was not using substances and did not need education on relapse prevention. Father's lack of cooperation with drug screens and positive screens for THC indicate ongoing substance abuse which Father has not remedied despite treatment and services aimed at helping him remain substance-free.

32. Father attempted suicide on September 30, 2006 by ingesting anti-freeze. Father was subsequently provided services aimed at treating depression through Evansville State Hospital. Father was hospitalized at the State Hospital until June 4 of 2007. Law Enforcement officers were also called to the home in February of 2008 when the father threatened to commit suicide. Father's ongoing difficulties with depression have rendered him unable to provide supervision for the children during past hospitalizations; ongoing concerns with father's mental stability place the children at risk due to Father's erratic behavior and inability to provide supervision to the children.

33. Father's inability to remain free from marijuana and alcohol is of particular concern due to his history of depression. Depression is the result of a chemical imbalance in the brain. Alcohol and the chemicals found in marijuana can act as depressants which will exacerbate father's condition. Father was informed of the importance of refraining from the use of drugs and alcohol due to his history of depression and suicidal ideation by the intensive reunification worker, yet father continued to test positive for marijuana.

34. Father appeared to focus on Mother and her actions at times rather than focusing on what was best for the children. On one occasion, Father made the children walk with him for nearly a mile in cold weather because he was angry at Mother for being at a friend's house and he wanted to retrieve the car so that she would not be able to use it. Father would also refuse to pick up the children when he was angry with Mother so that she would be prevented from participating in activities she wished to participate in. The children were used as pawns between the parents, and it appeared that the children were considered a hindrance that prevented each of the parents from being able to do what they wanted to do.

35. [Me.P.] has been diagnosed with Fetal Alcohol Spectrum and requires breathing treatments to be administered. The child's Mother provided these treatments when the child was in the care of the parents. The child's Father did not request to be taught how to provide the treatments. At the time of trial, neither the parent aide, intensive reunification specialist, CASA volunteer, or family case manager had been given any indication that Father had learned to provide these treatments or that Father had actually ever provided a breathing treatment to the child.

36. The child's Mother was often non-compliant with court-ordered services during the pending CHINS matters. Although Father and Mother did eventually divorce after the petitions to terminate parental rights were filed, prior to their divorce, Father did not act assertively during Mother's periods of non-compliance, and often went along with Mother's actions. Father was advised by the family case manager, the intensive reunification service provider, and his own mother that continuing to remain involved with the Mother of the children and failure to step up and parent the children may jeopardize his relationship with the children. Both the family case manager and intensive reunification specialist met with Father individually to ensure that Father was given the opportunity and the tools to remedy the concerns which kept the children out of the home independently from Mother. Father had ample opportunity to take responsibility to parent the children despite Mother's status in the pending cases, and failed to do so. Parents are responsible for the care of their children regardless of their marital status or the status of their significant other. Whether [Father] believed that he and the Mother of the children would be together or would eventually divorce, the fact remains that he was responsible for the care and supervision of his children at all times as their father.

37. During their lives, each of the children have [sic] been removed from the parents and placed in foster [care] for at least twice the amount of months that they were in the care of the parents.

38. [Ma.P.] was removed from her father on three occasions, and [Me.P.] was removed on two occasions. A previous petition to terminate father's parental rights had been filed and subsequently dismissed with respect to each child in 2007 before hearing was held on the current petitions to terminate parental rights. Father was aware that his compliance with services and his actions in the presence of the children could directly affect his parent-child relationship with [Ma.P. and Me.P.], yet he was unable and unwilling to make the necessary efforts to demonstrate his fitness as a parent even after being provided numerous services both prior to and following the filing of the petitions to terminate his parental rights.

39. [Ma.P.] was removed from her father's care on three occasions, and [Me.P.] was removed on two occasions. Each of these removals directly involved or closely followed incidents of violence involving the father.

Father's continued difficulty managing his anger in the presence of the children despite being aware that it could result in the removal of the children indicates that Father has not adequately learned to control his anger in a way which ensures the safety of the children. Further, [Father] has been incarcerated due to acts of domestic violence on multiple occasions during the pending CHINS matters. During periods of incarceration, [Father] has been unable to provide appropriate supervision to his children.

40. [Ma.P. and Me.P.] have been out of their parents' care for more than fifteen of the last 22 months. The children deserve to have permanency and should not have to wait any longer for Father to show his fitness as a parent. Father has had years to participate in services intended to promote reunification with his children, and in fact participated in a parenting class, intensive reunification services, education regarding drug treatment, mental health treatment, and reportedly anger management treatment. Yet after all of these services, Father's own actions have continued to demonstrate that he is unable to ensure the children's safety and provide a stable home environment for the children when they are in his care on a full-time basis.

41. [Father] never recommended or requested any additional services which may have assisted him in achieving reunification with his children.

42. The Court Appointed Special Advocate (CASA) volunteer, Marianne Pearson, has been assigned to the cases of [Ma.P. and Me.P.] for approximately two years. During that time, she visited with the children at least once a month, observed visits with the parents, had interaction with the parents, attended court hearings on the girls' cases, and reviewed all case files and documentation that concerned the children. Both the CASA volunteer and family case manager recommended termination of Father's parental rights due to Father's ongoing instability and anger management problems. The CASA volunteer and the family case manager believe that termination of [Father's] rights to [Ma.P.] and [Me.P.] is in the children's best interests. [Father] has had several years to prove that he is able to parent the children and has only demonstrated a continued pattern of substance use, mental instability and violence in the presence of the children. The children should not have to wait for [F]ather to receive any additional services. The children deserve to have permanency in their lives immediately.

(Termination Order at 6-11.)⁴ Based thereon, the court concluded:

There is a reasonable probability that the conditions that resulted in [Ma.P. and Me.P.]'s removal from, and continued placement outside the care and

⁴ We cite to the copy of the judgment included in the Appellant's Case Summary because the copies of the judgment included in the Appellant's Brief and Appendix had missing pages.

custody of [Father] will not be remedied. [Father] has had three years to prove himself as an appropriate parent with respect to [Ma.P.], and two years to do the same with respect to [Me.P.]. He has continued to demonstrate difficulty managing his anger to the detriment of the children after having a variety of intensive services provided to him to address this issue. He has also continued to be uncooperative with service providers and test[ed] positive for illegal substances after the filing of the petition to terminate his parental rights, indicating that he is unlikely to change his pattern of behavior.

(*Id.* at 12-13.)

Father asserts the trial court did not consider significant evidence of changed conditions at the time of the termination hearing. However Father's assertion amounts to nothing more than a request that we reweigh the evidence and reassess credibility, neither of which we are permitted to do on appeal. *In re D.D.*, 804 N.E.2d at 265. Rather we must consider only the favorable evidence and whether it supports the findings and judgment. *Id.*

A. Domestic Violence

Father asserts he has resolved his domestic violence issue by divorcing Mother. However, we do not believe the issue is so simple. Nor did the evidence require the trial court to find Father would not have anger control problems in the future.

Joanna Wiltsie, family case manager from DCS, never received proof that Father had completed anger management or domestic violence courses. During the course of DCS involvement with the family, Wiltsie was aware of eight episodes of domestic violence, at least four of which resulted in police intervention. (*Id.* at 194.) The children were present for at least five of these episodes, and Wiltsie discussed with Father the effect that violence can have on children.

Mary Watson, the intensive reunification therapist, discussed domestic violence with Father “five or six times.” (Tr. at 80.) Watson explained that, for people who commit domestic violence to change, they have to understand that there is no excuse for physical violence, “no matter what, being provoked . . . no matter how mad or whoever they are.” (*Id.* at 135-36.) People who are violent also have to learn not to be controlling. Watson tried to teach Father these principles, but she still saw Father trying to control Mother’s behavior.

Father skipped five of the nine weeks he was enrolled in the 23-week anger management group at the Lampion Center. The co-leader of that group believes that without “completing the program, there’s likely to be recidivism.” (*Id.* at 154.) Father did not complete the anger management course at the Lampion Center.

B. Failure To Take Responsibility

Father apparently did not learn how to give Me.P. a breathing treatment that was medically required. When the foster parents came to take her, Father indicated Mother had not given her the treatment for six days; yet he had not done anything to remedy the situation.

Neither did Father try to take the children to where he was staying; instead, he helped load the children in the foster parents’ car. After the children were removed the final time, Father did not ever indicate he wanted the children back. Father evidently did not want to keep the children in his apartment alone, but his mother’s house was not appropriate because other people also lived there. His mother offered to get a home with

him that was large enough to accommodate Ma.P. and Me.P., but Father did not ever accept her offer.

Watson experienced Father and Mother using the children as pawns to control the other parent's behavior. For example, Father once refused to pick up the children from daycare because he was mad that Mother had gone out. By the time the children were removed from parents the last time, Father had begun "us[ing] the foster family as a backup for child care." (*Id.* at 99.)

C. Drugs

Father claimed to be abstaining from the use of illegal drugs, but he frequently failed to respond to drug screen requests. Drug screens he completed in 2008, after the petition to terminate his parental rights had been filed, were positive for marijuana.

The final time technicians went to his apartment to collect a urine sample was approximately six weeks before the final hearing. Father refused to give a sample and refused to sign the form, instead saying "I'm not signing shit." (*Id.* at 18.)

D. Summary

Watson was unable to finish the goals and objectives she had set with Father because of fighting between Father and Mother. Watson believed Father had an opportunity as an individual to remedy those concerns, but he did not achieve his goals because "he didn't follow through." (*Id.* at 105.) Watson believed Father was a danger to the children because he is unable to control his anger and because of his depression. Watson believed Father's home was unstable "[b]ecause it was so volatile and . . . [t]here was no schedule." (*Id.* at 105-06.)

Father's counsel asked Watson if she thought he could care for the children alone, and she said "it might be too much." (*Id.* at 125.) When asked if the children would be traumatized by being with Father if the domestic violence had ended and Father were the solo caregiver, Watson said, "I don't really know . . . my concern would be . . . his depression." (*Id.* at 130.) Wiltsie discussed with Father whether he wanted to parent the children alone, and he indicated that, if he moved in with his mother, "that together they could . . . raise the children." (*Id.* at 205.) However, Father did not ever move in with his mother and request the children.

Wiltsie testified the children had been out of the home more than they had been in the home. When asked whether Father is unable to care for the children, Wiltsie indicated it was unclear whether he had adequate income to care for the children and that "with mental health concerns, um, we're not sure that he could . . . the stress level that it would be to have two children full time in the home with no assistance. It's unclear if he would be able to do that." (*Id.* at 224.) She was concerned that, under the stress of raising two pre-school children alone, Father would again become depressed and have difficulty controlling his anger.

Although Father allegedly received some form of drug treatment and anger management treatment when hospitalized following a suicide attempt in 2006, he continued to engage in domestic violence and tested positive for illegal drugs in 2008. This led Wiltsie to conclude the treatment he received had not remedied DCS's concerns regarding drug use and anger management. Wiltsie is not aware of any other services that could have been implemented to achieve reunification.

The CASA, Marianne Pearson, believed termination was appropriate because Father is “a little unstable, still has some anger, uh, that, um, if he were to care for the children on his . . . own, twenty-four/seven, that, uh, with his history it would be difficult.” (*Id.* at 258.) She believes “he has not resolved his anger issues, and . . . the drugs and the anger seem to go hand in hand. He appeases his anger or comfort, you know, with the . . . with the drugs.” (*Id.* at 260.) She also opined that in the two years before the hearing, Father had failed to step up and take responsibility for the children, and Father did not always insure the safety of the children.

All this evidence supports the finding there was a reasonable probability that the circumstances causing the children to be removed from, and remain out of, Father’s care had not been remedied.

2. Best Interests

The purpose of terminating parental rights is not to punish the parent but to protect the children involved. *K.S.*, 750 N.E.2d at 832. In determining the best interests of a child, the trial court must look beyond the factors identified by the DCS and look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). The trial court must subordinate the interests of the parents to those of the child. *Id.* The recommendations of a caseworker and guardian ad litem (“GAL”) that parental rights be terminated support a finding that termination is in the child’s best interest. *Id.*

The trial court found:

42. Both the CASA volunteer and family case manager recommend termination of Father's parental rights due to Father's ongoing instability and anger management problems. The CASA volunteer and the family case manager believe that termination of [Father's] rights to [Ma.P.] and [Me.P.] is in the children's best interests. [Father] has had several years to prove that he is able to parent the children and has only demonstrated a continued pattern of substance use, mental instability and violence in the presence of the children. The children should not have to wait for [F]ather to receive any additional services. The children deserve to have permanency in their lives immediately.

(Termination Order at 11.) Based thereon, the trial court concluded “[t]ermination of the parent-child relationship between the children and [Father], is in the best interests of the children.” (*Id.* at 13.)

Father asserts termination of his parental rights is not in the best interests of the children because he has a “strong bond” with his children and the girls know him as their father. (Appellant's Br. at 13.) However, Father has not abstained from using illegal drugs and has not resolved his anger control problem. As the court noted, more than one professional who worked with the family believed termination was the proper result. In light of this evidence, the court's findings and conclusion are not clearly erroneous.

The record supports the findings Father had not remedied the conditions that led to the children's continued removal and termination was in the children's best interests. Therefore, we affirm the termination of Father's parental rights.

Affirmed.

CRONE, J., concurs.

BROWN, J., dissents with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF Ma.P. AND Me.P., MINOR CHILDREN,)
AND M.P., FATHER,)
M.P., FATHER,)
Appellant-Respondent,)
vs.)
INDIANA DEPARTMENT OF CHILD)
SERVICES,)
Appellee-Petitioner.)

No. 82A05-0907-JV-377

BROWN, Judge, dissenting

I respectfully dissent from the majority’s determination that the record supports the court’s findings and conclusion that termination was in the children’s best interests. Given the highly positive reports about the children’s current foster care placement, the uncontroverted testimony concerning Father’s strong bond and consistently appropriate conduct with the children, and Watson’s testimony she believed it “[w]ould be a trauma to the children to lose their father at this point in their li[ves],” I cannot say continuation of the CHINS foster care arrangement would have much negative impact on the

children's well-being. Transcript at 112. Termination in this case is inappropriate in light of Father's recent strides toward improving his ability to care for the children, coupled with his demonstrated commitment to maintaining a parental relationship with the children by exercising regular visitation throughout the duration of the underlying proceedings.

I do not suggest Father was ready and able to undertake full care of Ma.P. and Me.P. at the time of the termination hearing. Nevertheless, given Father's recent positive steps to turn his life around, the strong mutual bond between Father and the children, and the fact Father never had an opportunity to be the children's sole care-giver following his divorce from Mother, I do not find the children's need for permanency through adoption to support a conclusion by clear and convincing evidence that termination of Father's parental rights is in the children's best interests.

Termination of a parent-child relationship is an extreme measure to be used only as a last resort when all other reasonable efforts to protect the integrity of the natural relationship between parent and child have failed. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 623 (Ind. Ct. App. 2006), trans. denied. This case has not reached the "last resort" state. By the time of the termination hearing, Father had divorced Mother, obtained suitable housing, was receiving disability income, was taking depression medication as prescribed, and had maintained consistent visitation with the children throughout the duration of the underlying proceedings. I acknowledge there is no guarantee Father will prove to be an exemplary parent. However, the law does

not require such a guarantee before a parent may attempt to demonstrate the desire and ability to achieve a meaningful reunification with his children. See id.

DCS did not present sufficient evidence to support a determination that termination of Father's parental rights is in Ma.P.'s and Me.P.'s best interests. Accordingly, I would reverse the judgment of the trial court terminating Father's parental rights to Ma.P. and Me.P., and remand the cause for further proceedings.

For these reasons, I respectfully dissent.