



## Termination

8/25/20

In **Matter of Term. Of Parent-Child Rel. of C.C.**, 153 N.E.3d 340 (Ind. Ct. App. 2020) *J. Pyle dissenting*, the Court affirmed the termination of Father's parental rights, and held that there was sufficient evidence to show a reasonable probability that the reasons for continued placement outside Father's home would not be remedied.

**Father's arguments regarding the findings were merely requests to reweigh the evidence, which the court would not do. Id. at 347.** Father challenged several findings of the trial court. The Court noted that the testimony of Therapist Ramsey led to reasonable inferences the supported the findings regarding the child having abandonment issues relating to Father, and the child's significant behavior problems which improved with his placement. Id. The Court found that finding regarding Father never responding to Caseworker Cole was supported by Cole's testimony regarding Father not returning calls and text messages. Id. Father also challenged the finding that placement and visitation were litigated any times, but the Court found that there were multiple petitions filed regarding placement changes and visitation modifications, which supported this finding. Id.

**There was sufficient evidence to show a reasonable probability that the reasons for continued placement outside Father's home would not be remedied. Id. at 348.** Pursuant to IC 31-35-2-4(b)(2), DCS must show by clear and convincing evidence that one of the following is true: "(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied. (ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child. (iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services". When a trial court evaluates the likelihood of remedied conditions, it must consider the parent's fitness at the time of the termination hearing and evidence of changed conditions; however, evidence of changed conditions may be balanced against a parent's habitual patterns. Id. (internal citations omitted). Habitual patterns may include, but are not limited to, a parent's criminal history, drug and alcohol abuse, history of neglect, failure to provide support, lack of proper housing or employment. Id. With respect to services, a court may consider what services were offered and the parent responded to those services; before lack of compliance of services may be relied upon for termination, there must be evidence of the underlying unfitness that led to the specific services. Id. (internal citation omitted). DCS did not need to rule out all possibility of change, and only needed to show that there was a reasonable probability of no change. Id. The Court noted the following evidence supporting the decision: (1) Father's repeated failure to remain in contact with DCS; (2) Father's ongoing failure to complete services; (3) Father's refusal to abstain from illegal substances; (4) Father's general failure to engage with any services, caseworkers, home-based service providers, and others.

**Justice Pyle dissented**, opining that the child had been removed from Mother’s care for drug use, and from Father’s care for abandonment. Justice Pyle opined that the evidence showed Father was making progress on many fronts and was completing some services with positive results. Justice Pyle indicated DCS had not done enough to secure Father’s compliance with substance abuse tests and referrals. He further opined that Father’s fitness should have been examined at the time of the hearing, and DCS failed to meet its burden.