

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.

ATTORNEY FOR APPELLANT
CHARLES TRICE:

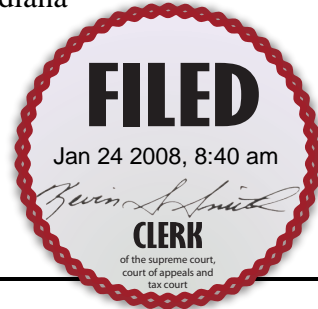
CARA SCHAEFER WIENEKE
Indianapolis, Indiana

ATTORNEY FOR APPELLANT
NICOLE KNAPP:

KATHERINE A. CORNELIUS
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

TAMMI FORSTER
Marion County Department of
Child Services – Legal Division
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF C.K., MINOR CHILD, AND)
HIS MOTHER, NICOLE KNAPP, AND HIS)
FATHER, CHARLES TRICE,)

NICOLE KNAPP,)
Appellant/Respondent,)

and)

CHARLES TRICE,)
Appellant/Respondent,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES)
Appellee/Petitioner,)

and)

No. 49A02-0706-JV-533

CHILD ADVOCATES, INC.)
Appellee/Guardian ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Danielle Gaughan, Magistrate
The Honorable Marilyn A. Moores, Judge
Cause No. 49D09-0605-JT-20404

January 24, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellants-Respondents Nicole Knapp and Charles Trice appeal from the juvenile court's order terminating their parental rights to their minor child, C.K. Nicole and Charles challenge whether (1) the Marion County Department of Child Services ("MCDCS") presented sufficient evidence to satisfy the statutory requirements for terminating their parental rights; (2) the juvenile court improperly admitted hearsay evidence pertaining to Nicole at the termination proceedings; and (3) the juvenile court violated Charles's due process rights by denying his motion for a continuance of the termination hearing. Concluding that the evidence was sufficient to support the juvenile court's order terminating Nicole's and Charles's parental rights to C.K., and finding no clear error on the juvenile court's behalf, we affirm.

FACTS AND PROCEDURAL HISTORY

C.K. was born on June 6, 2005. Nicole Knapp is C.K.'s mother, and Charles Trice is alleged to be C.K.'s father.¹ On June 10, 2005, MCDCS filed a petition, pursuant to Indiana Code section 31-34-1-10 (2004), alleging that C.K. was a child in need of services ("CHINS") because both C.K. and Nicole tested positive for cocaine at the time of C.K.'s birth² and because Nicole's whereabouts immediately following C.K.'s birth were unknown. On September 13, 2005, Nicole admitted to the allegations in the CHINS petition, and the juvenile court entered a dispositional order on October 18, 2005, ordering her to complete an array of services. Likewise, on October 18, 2005, Charles admitted to the allegations in the CHINS petition, and the juvenile court entered a dispositional order on November 18, 2005, ordering him to complete an array of services.

Initially, C.K. was placed with his maternal grandfather, Donald Knapp, but was subsequently removed after Donald Knapp was arrested for allegedly stealing antennas. C.K. was then placed with Brenda Knapp, the ex-wife of one of Nicole's cousins. Brenda Knapp has since expressed interest in adopting C.K. On May 17, 2006, MCDCS filed a petition requesting that the juvenile court involuntarily terminate Nicole's and Charles's parental rights with regard to C.K. On April 5, 2007, the juvenile court conducted part one of a fact-finding hearing. At the time, both Nicole and Charles were

¹ Though Charles Trice acknowledges his paternity of C.K., he has never legally established paternity, nor has he offered or been ordered to pay child support for C.K.

² Indiana Code section 31-34-1-10 provides that "[a] child is a child in need of services if: (1) the child is born with: ... (B) any amount, including a trace amount, of a controlled substance or a legend drug in the child's body; and (2) the child needs care, treatment, or rehabilitation that: ... (B) is unlikely to be provided or accepted without the coercive intervention of the court."

incarcerated. Nicole appeared telephonically and testified before the juvenile court. Charles requested that he be physically transported to the April 5th hearing, but his request was denied. Charles did not appear telephonically at the April 5th hearing.³ On April 17, 2007, the juvenile court conducted part two of the fact-finding hearing, at which Charles appeared telephonically and testified before the juvenile court. Nicole did not appear telephonically at the April 17th hearing. Nicole and Charles were each represented by their attorneys at both the April 5th and April 17th fact-finding hearings. On both dates, their attorneys presented evidence on their behalf and subjected MCDCS's case to adversarial testing. On May 11, 2007, the juvenile court issued an order terminating both Nicole's and Charles's parental rights to C.K. Nicole and Charles now appeal.

DISCUSSION AND DECISION

While we recognize that the parent-child relationship is “one of the most valued relationships in our culture,” we also recognize that “parental interests are not absolute and must be subordinated to the child’s best interests in determining the proper disposition of a petition to involuntarily terminate one’s parental rights.” *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005) (internal quotations omitted). The involuntary termination of one’s parental rights is the most extreme sanction a court can impose because termination severs all rights a parent has with regard to his or her children. *See In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App.

³ The evidence suggests that one reason for Charles’s failure to appear telephonically at the April 5, 2007 fact-finding hearing was that his attorney failed to obtain the proper contact information for Charles and provide it to the court on the date of the hearing.

2001), *trans. denied*. As such, termination is intended as a last resort, available only when all other reasonable efforts have failed. *Id.* The purpose of terminating one's parental rights is not to punish the parent, but rather to protect the child. *Id.*

I. Sufficiency of the Evidence

Nicole and Charles contend that the evidence presented was insufficient to support the juvenile court's order terminating their parental rights to C.K. In reviewing termination proceedings on appeal, this court will not reweigh the evidence nor assess the credibility of the witnesses. *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 879 (Ind. Ct. App. 2004). We only consider the evidence that supports the juvenile court's decision and reasonable inferences drawn therefrom. *Id.* Where, as here, the juvenile court includes findings of fact and conclusions thereon in its order terminating parental rights, our standard of review is two-tiered. *Id.* First, we must determine whether the evidence supports the findings, and, second, whether the findings support the legal conclusions. *Id.*

In deference to the juvenile court's unique position to assess the evidence, we set aside the juvenile court's findings and judgment terminating a parent-child relationship only if they are clearly erroneous. *Id.* A finding of fact is clearly erroneous when there are no facts or inferences drawn therefrom to support it. *Id.* A judgment is clearly erroneous only if the legal conclusions made by the juvenile court are not supported by its findings of fact or the conclusions do not support the judgment. *Id.*

In order to involuntarily terminate Nicole's and Charles's parental rights, MCDCS must establish:

- (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);
- (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 interest 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) (2005). Here, Nicole and Charles challenge the juvenile court's finding that MCDCS established that the conditions resulting in C.K.'s removal from their care would not be remedied, and that termination of their parental rights was in C.K.'s best interest.

A. Conditions Unlikely to be Remedied

In the instant case, Nicole and Charles first assert that MCDCS failed to establish that the conditions resulting in C.K.'s removal from their care were unlikely to be remedied. To determine whether conditions are likely to be remedied, the juvenile court must examine Nicole's and Charles's fitness to care for C.K. as of the time of the termination hearing and take into account any evidence of changed conditions. *In re S.P.H.*, 806 N.E.2d at 881. At the same time, the juvenile court must evaluate Nicole's and Charles's patterns of conduct to determine whether there is a substantial probability

of future neglect or deprivation. *Id.* When making its determination, the juvenile court need not wait until the child is irreversibly harmed so long as clear and convincing evidence exists that the shortfalls of the parents' ability are not likely to be remedied. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Nicole and Charles specifically argue that the trial court's findings are clearly erroneous because they each have completed drug treatment programs while incarcerated; the juvenile court should have allowed them a sufficient period of time, following their release, to complete services and display their parenting skills before terminating their parental rights; and lesser alternatives to termination, such as the establishment of a guardianship, were available.

First, Nicole and Charles both attempt to persuade us that they have beaten their drug addictions. They each claim to have completed drug treatment programs while incarcerated and that they have been drug-free for a substantial period of time. However, neither has provided any documentary evidence supporting these claims. Nicole claims to only having become addicted to drugs during her relationship with Charles, and Charles claims to having never been addicted to drugs. Given that the juvenile court was in the best position to judge the credibility of Nicole's and Charles's testimony, it was within the court's discretion to conclude that even if Nicole and Charles had refrained from drug use while in prison, their pattern of conduct suggests that they will relapse upon release and the probability will be high that the situation will once more become as it was before they were incarcerated. *See id.* Effectively, Nicole and Charles are requesting that we reweigh the evidence, which we will not do. Therefore, based on the

juvenile court's assessment of the evidence and the credibility of the witnesses, we cannot conclude that the juvenile court's judgment is clearly erroneous.

Next, Nicole and Charles claim that they should be given a sufficient period of time, after their release from prison, to complete services and to display their parental abilities before the juvenile court terminates their parental rights. In support, both rely upon *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*, where this court concluded that the trial court erred by terminating Father's rights when Father was scheduled to be released from prison six weeks after the termination hearing because Father had taken steps to better his life while in prison, had shown substantial interest in maintaining a parental relationship with his children, was willing to continue participation in parenting and personal improvement programs, and had previously established a parent-child relationship with his children. In reversing, the *Rowlett* court further recognized that Father's children's familial relationships would not be significantly altered if ultimately placed in his care. Unlike in *Rowlett*, here neither Nicole nor Charles has previously established a parent-child relationship with C.K.; C.K. has been under MCDCS's care for his entire life; C.K. has established a parent-child relationship with his current caregiver, Brenda Knapp, who plans to adopt C.K.; and Charles has failed to show any willingness to participate in the services ordered by the CHINS court, as is evidenced by his failure to contact MCDCS to begin services during a three-month period when he was released from prison. We also recognize that C.K.'s familial relationships would undoubtedly change if placed with Nicole or Charles, as is evidenced by Charles's animosity toward Brenda Knapp.

Furthermore, the guardian ad litem testified that any future delay in the termination proceedings would likely have an adverse effect on C.K.'s continued development.

Again, the trial court need not wait until the child is irreversibly harmed such that the child's physical, mental and social development is permanently impaired before terminating the parent-child relationship. *Matter of C.M.*, 675 N.E.2d 1134, 1139 (Ind. Ct. App. 1997). Here, we conclude that there was sufficient evidence before the juvenile court to support its finding that any further delay of these termination proceedings would likely have an adverse effect upon C.K.'s future development and that MCDCS has sufficiently proved that it is unlikely that the conditions leading to C.K.'s removal from Nicole's and Charles's care will be remedied.

Additionally, Nicole claims that the juvenile court clearly erred in terminating her parental rights because lesser alternatives to termination, such as the establishment of a guardianship for C.K., were available. Nicole presents no authority to support her contention, but rather repeatedly points to an allegedly similar "guardianship" that she claims has been established for her nine-year-old daughter, R.K., while she is in prison. However, it appears that no such guardianship exists because R.K. was adopted by Diane and Bruce Geibel, Nicole's mother and step-father on October 31, 2002, as is evidenced by an adoption order entered in Cass County. Nicole apparently completely disregards the October 31, 2002 adoption order for R.K., and continuously misrepresents this situation before this court. Furthermore, regardless of Nicole's apparent misrepresentation of the situation regarding R.K., we are unpersuaded that the juvenile court clearly erred in terminating Nicole's parental rights because Nicole failed to present

any relevant authority, and we found none, suggesting that it is clearly erroneous for a juvenile court to disregard a parent's request to establish a guardianship rather than to terminate his or her parental rights when such a request is made at the termination hearing.

B. C.K.'s Best Interest

Nicole and Charles next assert that MCDCS failed to establish that the termination of their parental rights was in C.K.'s best interest. We disagree. Paula Johnson, the MCDCS case manager, testified that:

Our office believes that termination of parental rights and adoption is in [C.K.'s] best interest [because] ... we have two parents that have been incarcerated pretty much [C.K.'s] entire life. We cannot monitor the services. There is [sic] things that both parents would need to do. And there is [sic] also untreated drug issues which would put [C.K.] in jeopardy to be with either of [C.K.'s] parents at this point in time.

Tr. p. 145. Further, when asked if she thought it was in C.K.'s best interest to give Nicole and Charles extra time to complete services, Ms. Johnson stated, "No, not at this point. The parents have been out of [C.K.'s] life for almost [C.K.'s] entire life which is going on two years." Tr. p. 151.

In addition, Greg Ellis, the guardian ad litem, testified at the termination hearing, and during the course of his testimony, the following exchange occurred:

Q: Now what do you believe is in the best interest of [C.K.] as the outcome of the case?

A: At this time, termination of parental rights and adoption.

Q: And are you aware of the plan that DCS has?

A: Adoption.

Q: And do you believe that the plan is in [C.K.'s] best interests?

A: Yes, I do.

Q: And why is that?

A: [C.K.] is in need of permanency at this time. [C.K.'s] almost two years old. [C.K.] has never been in the care of [C.K.'s] parents. And moving forward with permanency is in [C.K.'s] best interest.

Tr. p. 207.

Notably, Charles even testified that he believed adoption was in C.K.'s best interest at the present time. During the course of Charles's testimony, the following exchange occurred:

Q: You said that you wish for your child to be adopted?

A: I don't want to give away my rights for my child but I got to think about [C.K.'s] best interest.

Q: I didn't understand you.

A: I said I want the best for my child so I got to think about what's best – what's in [C.K.'s] best interest for right now for what I'm going through.

Q: Is that adoption?

A: Yes, ma'am.

Tr. p. 266.

* * * * *

Q: Now you said its in the best interest for [C.K.] to be adopted ... is that right?

A: Yes ma'am.

Tr. p. 269. In light of the testimony of the MCDCS case manager, the guardian ad litem, and Charles himself, we conclude that the evidence is sufficient to satisfy MCDCS's burden of proving that termination of Nicole and Charles's parental rights is in C.K.'s best interest.

II. Admission of Evidence

Nicole next contends that the juvenile court improperly admitted documents containing hearsay evidence at the termination hearings. Our standard of review for the

admission of documents is well-settled. *Carter v. Knox County Office of Family & Children*, 761 N.E.2d 431, 437 (Ind. Ct. App. 2001). The admission or exclusion of documentary evidence rests within the discretion of the juvenile court. *Id.* A proper foundation for the admission of such evidence must necessarily be laid, and if the juvenile court, within its discretion, is satisfied as to the document's validity, such evidence may be admitted. *Id.* We will not disturb the rulings of the juvenile court unless an abuse of discretion is shown. *Id.* An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and the circumstances before the court. *Id.*

Nicole claims that the juvenile court abused its discretion by admitting the CHINS petition as it pertained to her, as well as related documents, including her admission to said petition, into evidence at the termination fact-finding hearing. Again, we disagree. MCDCS was entitled to offer into evidence “the CHINS petition, the predispositional report, the parental participation order, the modification report, or any other document or order containing written findings, which was required to be created during the proceedings.” *Id.* (quoting *Tipton v. Marion County Dep’t of Pub. Welfare*, 629 N.E.2d 1262, 1266 (Ind. Ct. App. 1994) (noting that this court’s finding that the Office of Family and Children’s (“OFC”) failed to present sufficient evidence to support the termination of Father’s parental rights could largely be attributed to OFC’s failure to admit the CHINS petitions, orders, and reports into evidence at the termination hearing)); *see also Adams v. Marion County Office of Family & Children*, 659 N.E.2d 202, 204 (Ind. Ct. App. 1995) (finding sufficient evidence to uphold a termination based solely upon the CHINS

petition, CHINS order, predispositional report, and dispositional order). Furthermore, we note that while Nicole could present evidence during the termination hearing to refute her prior admissions to the CHINS petition, said admissions were admissible to support the termination of her parental rights. *See Matter of C.M.*, 675 N.E.2d at 1138. Therefore, we conclude that the juvenile court did not abuse its discretion in admitting the CHINS petition and related documents, including Nicole's admission at the termination hearing.

III. Due Process

Charles next contends that the juvenile court's denial of his motion for a continuance violated his due process rights.⁴ We disagree. When MCDCS seeks to terminate a parent-child relationship, it must do so in a manner that meets the requirements of the Due Process Clause. *Tillotson v. Clay County Office of Family & Children*, 777 N.E.2d 741, 745 (Ind. Ct. App. 2002), *trans. denied*. While an incarcerated parent does not have an absolute right to be physically present at a termination hearing, such parent does have the right to be heard at a meaningful time and in a meaningful manner. *Id.* The decision whether to permit an incarcerated parent to physically attend such a hearing rests within the sound discretion of the trial court. *In Re*

⁴ In support of his argument, Charles again relies upon this court's conclusion in *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. However, once again, this case can easily be distinguished from *Rowlett*, because unlike in *Rowlett*, Charles did have the opportunity to demonstrate his willingness and ability to assume parental duties. Here, Charles was released from prison on November 1, 2006, and remained free until he was rearrested ninety-days later. During this ninety-day period, Charles failed to contact the MCDCS case manager to notify her of his release from prison. Charles likewise failed to complete, or even initiate, any of the services ordered pursuant to the CHINS determination. Furthermore, Charles failed to initiate visitation with C.K. through either the MCDCS case manager or C.K.'s guardian. Because Charles was presented with the opportunity to demonstrate his willingness and ability to assume parental duties but failed to do so, Charles's reliance on *Rowlett* is misplaced.

S.P.H., 806 N.E.2d at 879. Although due process has never been precisely defined, the phrase embodies a requirement of fundamental fairness. *Tillotson*, 777 N.E.2d at 745. The nature of the process due in parental rights termination proceedings turns on a balancing of three factors: (1) the private interests affected by the proceedings; (2) the risk of error created by the State's chosen procedure; and (3) the countervailing governmental interest supporting the use of the challenged procedure. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*; *Tillotson*, 777 N.E.2d at 745.

In cases such as this, both the private interests and the countervailing governmental interests that are affected by the proceeding are substantial. In particular, the action concerns a parent's interest in the care, custody, and control of his child, which has been recognized as one of the most valued relationships in our culture. *See In re E.E.*, 853 N.E.2d at 1043. Moreover, it is well settled that the right to raise one's child is an essential, basic right that is more precious than property rights. *Id.* As such, a parent's interest in the accuracy and justice of the decision is commanding. *Id.* On the other hand, the State's *parens patriae* interest in protecting the welfare of a child is also significant. *Id.* Delays in the adjudication of a case impose significant costs upon the functions of government as well as an intangible cost to the life of the child involved. *Id.*

Here, Charles has been incarcerated for most of C.K.'s life. He was released from incarceration on November 1, 2006, but was rearrested ninety days later. During the ninety-day period that he was not incarcerated, Charles did not attempt to complete any of the services ordered by the CHINS court or even contact the MCDCS case manager to notify her of his release from prison. Charles did not initiate visitation with C.K. during

this ninety-day period and admittedly has not even seen C.K. since approximately October 18, 2005. Tr. p. 270. Further, the guardian ad litem appointed in this matter testified that C.K. is thriving in his current placement and opined that further delay would likely have an adverse effect on C.K.'s continued development. While we recognize that continuances may, at times, be necessary to ensure the protection of a parent's due process rights, we must also be cognizant of the strain such delays place upon the children. *Id.* Here, we conclude that the entirety of the circumstances justified the juvenile court's denial of Charles's motion for a continuance of the April 5, 2007 termination hearing because his rights were outweighed by the MCDCS's interest in C.K.'s continued development.

Furthermore, when balancing the competing interests of a parent and the State, we must also consider the risk of error created by the challenged procedure. *Id.* In this case, Charles claims that the risk of error is great because the MCDCS case manager failed to contact him, failed to notify him of all services he was required to complete pursuant to the CHINS determination, and failed to help him complete all of the required services. He also claims that the risk of error is great because he has been unable to display his parenting skills while he has been incarcerated. We find this claim unpersuasive, however, and conclude that Charles's rights were not significantly compromised.

First, the law concerning termination of parental rights does not require MCDCS to offer services to the parent to correct the deficiencies in child-care. *In re B.D.J.*, 728 N.E.2d at 201. While a participation plan serves as a useful tool in assisting parents in meeting their obligations, and while county departments of public welfare routinely offer

services to assist parents in regaining custody of their children, termination of parental rights may occur independently of them, as long as the elements of Indiana Code section 31-35-2-4 are proven by clear and convincing evidence. *Id.* Therefore, a parent may not sit idly by without asserting a need or desire for services and then successfully argue that he was denied services to assist him with his parenting. *Id.* Here, Charles sought no services from MCDCS. As has been discussed above, Charles was released from prison for a period of ninety days, beginning on November 1, 2006, but during that time he failed to notify the MCDCS case manager of his release or whereabouts, and notably, he did not attempt to complete the services ordered pursuant to the CHINS determination or even to establish visitation with C.K.

Second, Charles appeared telephonically and testified on his own behalf during the April 17th fact-finding hearing, allowing Charles meaningful time and a meaningful manner in which to be heard. *See Tillotson*, 777 N.E.2d at 775. Significantly, during his testimony, Charles admitted that adoption was in C.K.'s best interest. In addition, Charles was represented by counsel throughout the entire proceeding and his counsel was able to subject MCDCS's case to full adversarial testing, as is evidenced by the fact that Charles's counsel cross-examined MCDCS's witnesses and objected to testimony and exhibits presented by MCDCS.

Finally, we again observe that Charles does not have a constitutional right to be physically present at the termination hearing. *See id.* Given that Charles's attorney represented him and cross-examined MCDCS's witnesses during the April 5th fact-finding hearing in Charles's absence, Charles was able to appear telephonically and

testify on his own behalf during the April 17th fact-finding hearing, Charles admitted that adoption was in C.K.'s best interest, Charles failed to attempt to complete any services or even contact the MCDCS case manager during the ninety-day period that he was not incarcerated during late 2006 and early 2007, and Charles does not have a constitutional right to be present at the hearing, we conclude that the risk of error caused by the juvenile court's denial of the continuance was minimal. *See In re E.E.*, 853 N.E.2d at 1044.

After balancing the substantial interest of Charles with that of MCDCS and in light of the minimal risk of error created by the challenged procedure, we conclude that the juvenile court's denial of his request for a continuance of the April 5, 2007 hearing, and its decision to allow Charles to appear telephonically during the April 17, 2007 fact-finding hearing did not deny Charles due process of law. *See id.*

In sum, we conclude that MCDCS presented sufficient evidence to support the juvenile court's order terminating Nicole's and Charles's parental rights to C.K., the juvenile court did not abuse its discretion by admitting the CHINS order and related documents into evidence, and Charles's due process rights were not violated.

The judgment of the juvenile court is affirmed.

BAKER, C.J., and DARDEN, J., concur.