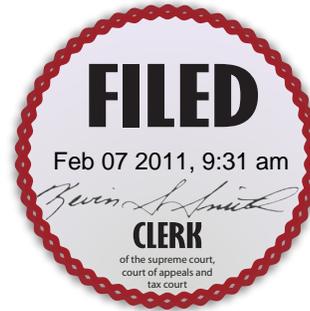


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF Z.S. AND A.P. AND )  
THEIR MOTHER, T.S., )

T.S. (MOTHER), )  
)  
Appellant-Respondent, )

vs. )

KNOX COUNTY DEPARTMENT OF )  
CHILD SERVICES, )

Appellee-Petitioner. )  
)

No. 42A01-1006-JT-312

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APPEAL FROM THE KNOX SUPERIOR COURT  
The Honorable W. Timothy Crowley, Judge  
Cause Nos. 42D01-0910-JT-38, 42D01-0910-JT-39

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**February 7, 2011**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**BRADFORD, Judge**

Appellant-Respondent T.S. (“Mother”) appeals the termination of her parental rights to her children Z.S. and A.P. (“the Children”), claiming that Appellee-Petitioner Knox County Department of Child Services (“KCDCS”) failed to produce sufficient evidence to sustain the juvenile court’s conclusions that the reasons for the original removal of the children are unlikely to be remedied, that continuing the parent-child relationships poses a threat to the children, and that termination is in the children’s best interest. We affirm.

### FACTS AND PROCEDURAL HISTORY

Z.S. was born on February 10, 1997, and A.P. was born on February 12, 1999, to Mother and Father. Father has voluntarily relinquished his parental rights to the Children and is not a party to this appeal. Mother’s contacts with State authorities regarding the Children began in July of 2002 in Gibson County, when authorities instituted a program of informal adjustment (“IA”) that lasted until June of 2003. In January of 2004, Gibson County authorities removed the Children from Mother’s care due to general neglect and suspected substance abuse and returned them in July of 2005.

After Mother and the Children moved to Knox County, authorities became involved in September of 2007, when Mother left the children with a neighbor or friend before going to Indianapolis. As it happened, that person chose not to care for the Children and told them to go home, where they were later found attempting to force their way inside. Another IA was started and lasted approximately six months. Among the

conditions of the IA were that Mother submit to thrice-weekly drug screens, obtain housing and employment, and follow any recommendations made. Mother was not consistently compliant with the conditions, and the IA was ultimately unsuccessful.

On July 7, 2008, the juvenile court issued an emergency custody order removing the Children from Mother's home due to her incarceration. On July 11, 2008, KCDCS filed a petition alleging the Children to be children in need of services ("CHINS"). On August 14, 2008, following a hearing, the juvenile court found the Children to be CHINS. In dispositional orders issued on September 5, 2008, the juvenile court ordered that the Children remain in their placement with relatives and that Mother participate in the following services:

- (1) [Mother] will complete a drug and alcohol evaluation at the Samaritan Center and follow through with the recommendation of the therapist;
- (2) [Mother] will submit to a minimum of three drug screens per week or as requested by [KC]DCS or [Children and Family Services];
- (3) [Mother] will not associate with anyone that is involved in illegal drugs of any kind;
- (4) [Mother] will obtain and maintain safe and stable housing for herself and her family;
- (5) [Mother] will maintain a legal means of supporting herself and her family;
- (6) [Mother] will participate in parenting classes through Children and Family Services and follow through with their recommendations and services;
- (7) [Mother] will work with the case manager from Children and Family Services and follow through with their recommendations and services;
- (8) [Mother] is to allow both announced and unannounced visits by the Family Case Manager;
- (9) [Mother] will inform the Family Case Manager of any change of address, school, household composition or employment with three (3) days of the change;
- (10) [Mother] will maintain, at a minimum, monthly contact with Family Case Manager. This contact can include scheduled or drop by visits in the office or at home, phone calls, voice mail messages, or written messages;
- (11) [Mother] will follow all recommendations set forth by service providers that [KC]DCS offers to them;
- (12) [Mother] will sign all necessary releases so that all current and past service providers and the [KC]DCS can communicate.

KCDCS Ex. 1, tab 16; KCDCS Ex. 2, tab 16.

Mother did “[n]ot [comply] very well” with the ordered services. Tr. p. 25. Mother failed to comply with a recommendation that she complete an intensive outpatient program for her substance abuse and was expelled from a women’s treatment group due to disruptive behavior. Between August 1, 2008, and March 22, 2010, it appears that Mother was screened for drug use 122 times, testing positive for benzodiazepines twice, methamphetamine once, and THC twenty-one times. Additionally, Mother missed numerous scheduled screens; out of approximately 231 scheduled screens, Mother missed approximately 109.<sup>1</sup> Overall, Mother’s compliance was “minimal” regarding court orders to complete drug and alcohol evaluation and follow related recommendations. Tr. p. 169.

Since the beginning of the CHINS proceeding, Mother has had at least seven residences in three counties and two states, staying in none longer than nine months. Since 2003, Mother has held at least seven jobs, with her longest stint at any one being approximately six months. As of April 12, 2010, Mother was earning \$8.00 per hour working approximately twenty to thirty hours per week for her landlord cleaning and upgrading rental properties. Mother was ordered on June 8, 2009, to pay \$15.00 per week in child support but admitted at the termination hearing on April 12, 2010, that she had failed to make a single payment.

Mary Robb of Child and Family Services was involved with Mother’s case from 2003 until September of 2009. Robb testified that Mother’s compliance with ordered services from the summer of 2008 until September 2009 was “minimal” and that Mother had made “[n]ot much” progress during that time. Tr. p. 25. Robb supervised visitations

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<sup>1</sup> From August 1, 2008, to September of 2008, Mother was scheduled for thrice-weekly drug screens, twice-weekly from September of 2008 to mid-January 2009, and thrice-weekly thereafter.

involving Mother, the Children, and, on occasion, Mother's older child, J.S. Visitations were scheduled to occur twice a week, and "[p]retty much weekly [Mother] missed one or the other or both and was late the majority of the time." Tr. p. 28. When J.S. attended the sessions, the majority of Mother's focus was on J.S. Mother "could not handle her feelings with [Z.S.] very well during the visitations" and "would get angry" with him. Tr. p. 28. Robb also supervised sibling visitations with the Children and J.S., which "went great for the most part" with "[m]inimal problems." Tr. p. 29.

Cindy Granger became Mother's supervised visit supervisor on August 29, 2009. Visitation was to occur for two hours every Saturday and involve Mother, the Children, and T.S. From October 2, 2009, until March 30, 2010, Mother missed six out of twenty scheduled visitations, and those she attended were "chaotic." Tr. p. 142. Mother's main focus during the visitations was usually J.S. and "[t]here [were] times when she comes in and she makes little to no physical contact with the children." Tr. p. 143. Mother spent a great deal of time at visitations on the telephone or smoking outside. Mother paid "very little to no attention" to A.P. during the visitations, and, when Z.S. would act out, "[s]he usually yell[ed] at him, t[old] him to shut up, be quiet." Tr. p. 145.

Jackie Foley was Mother's home-based case manager after October of 2009. Foley testified that Mother had lived in at least five different residences between October of 2009 and March 30, 2010. Mother did not provide Foley with her work schedule in a timely fashion so that visitations could be arranged, failed to follow up on a vocational training opportunity suggested by Foley, was not "fully engaged in the services that we

were set out to do[,]” and asked Foley to lie to KCDCS regarding their interactions. Tr. pp. 112-19.

Mother failed to inform the KCDCS family case manager Jennifer Beadles of changes in address, school, household composition, or employment within three days. Mother failed to maintain minimum monthly contact with Beadles, and, much of the time, Beadles was unaware of her whereabouts. Mother only rarely contacted Beadles unless she needed a gas voucher. Beadles testified that Mother had an inability to maintain the stability required to care for the Children and had not shown that she could maintain employment or pay her bills. KCDCS’s placement plan for the Children in the event of termination was adoption.

On October 26, 2009, KCDCS filed petitions for involuntary termination of Mother’s parental rights to Children. The juvenile court held a termination hearing on March 30, April 8, and April 12, 2010. On May 5, 2010, the juvenile court issued orders terminating Mother’s parental rights to the Children. The juvenile court found that there was a reasonable probability that the conditions that resulted in the Children’s removal would not be remedied, that termination of Mother’s parental rights was in the Children’s best interest, and that KCDCS had a satisfactory plan for the Children’s care and placement.

### **DISCUSSION AND DECISION**

The Fourteenth Amendment to the United States Constitution protects the traditional right of a parent to establish a home and raise her children. *Bester v. Lake Cty. Office of Family & Children*, 839 N.E.2d 143, 145 (Ind. 2005). Further, we acknowledge

that the parent-child relationship is “one of the most valued relationships of our culture.” *Id.* However, although parental rights are of a constitutional dimension, the law allows for the termination of those rights when a parent is unable or unwilling to meet her responsibility as a parent. *In re T.F.*, 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), *trans. denied*. Therefore, parental rights are not absolute and must be subordinated to the children’s interest in determining the appropriate disposition of a petition to terminate the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish the parent but to protect the children. *Id.* Termination of parental rights is proper where the children’s emotional and physical development is threatened. *Id.* The juvenile court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.*

### **Sufficiency of the Evidence**

Mother contends that the evidence presented at court was insufficient to support the juvenile court’s order terminating her parental rights. In reviewing termination proceedings on appeal, this court will not reweigh the evidence or 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 a parent's parental rights, KCDACS must establish by clear and convincing evidence 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;
  - (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) the child has been removed from the parent and has been under the supervision of a county office of family and children or probation department for at least fifteen (15) months of the most recent twenty-two (22) months, beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;
- (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) (2008). Specifically, Mother claims that KCDACS failed to establish that there was a reasonable probability that the conditions resulting in removal

would not be remedied, the parent-child relationship posed a threat to the Children, or that termination was in the Children's best interest.

**A. Reasonable Probability that the Conditions Resulting in Removal Would Not be Remedied**

Mother contends that the record establishes that the reasons for the Children's removal had been remedied by the time of the hearing. When assessing whether a reasonable probability exists that the conditions justifying the children's removal and continued placement outside the parent's care will not be remedied, the juvenile court must judge the parent's fitness to care for her children at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re A.N.J.*, 690 N.E.2d 716, 721 (Ind. Ct. App. 1997). The juvenile court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation. *Id.* A juvenile court may properly consider evidence of the parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe Cty. Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Moreover, a juvenile court "can reasonably consider the services offered by [DCS] to the parent and the parent's response to those services." *Id.* (quoting *In re A.C.C.*, 682 N.E.2d 542, 544 (Ind. Ct. App. 1997)).

The juvenile court specifically cited Mother's history of poor compliance with services related to her substance abuse, her failure to maintain safe and stable housing, and her failure to work with and follow the recommendations of service providers. The record amply supports the juvenile court's findings in these regards. KCDCS presented

evidence that Mother had submitted to only 122 out of approximately 231 scheduled drug screens since the beginning of the CHINS case and had tested positive for benzodiazepines twice, methamphetamine once, and THC twenty-one times. KCDCS also presented evidence that Mother refused to participate in an intensive outpatient program, was expelled from a treatment group due to her disruptive behavior, thereafter failed to meet individually with her counselor, and that her overall compliance with substance-abuse-related services was “minimal.”

The juvenile court heard evidence that Mother had had at least seven different residences since the beginning of the CHINS case in July of 2008, had had at least five between October of 2009 and March 30, 2010, and had never lived in any one of them for longer than nine months. In addition to the above, KCDCS presented evidence that Mother failed to provide it notice of changes in address, household composition, and employment; failed to pay a child support obligation; and failed to maintain monthly contacts with Beadles. We conclude that evidence of Mother’s history of substance abuse and noncompliance with related services, her failure to obtain stable housing, and her poor record of compliance with ordered services in general supports the juvenile court’s finding that the conditions that resulted in the Children’s removal were not likely to be remedied.

Mother points to evidence that she had finally moved her trailer home to its permanent location in February of 2010 and that it was appropriate to house her and the Children, that she had submitted to the drug screens as ordered for three months prior to the termination hearing with no positive results, and that she had completed an ordered

parenting course. It should be noted, however, that Mother's record of slightly better compliance with ordered services was amassed only *after* KCDCS filed its termination petitions. Moreover, there is evidence that Mother has a history of temporary compliance followed by relapse. According to Father, Mother was able to maintain short periods of sobriety, "[l]ong enough to, you know, make it look good[.]" Tr. p. 17. Under the circumstances, the juvenile court was not required to accept Mother's recent history of improved compliance as proof that the conditions that led to the Children's removal had been remedied, and did not. Mother's argument is an invitation to reweigh the evidence, one which we decline. KCDCS produced sufficient evidence to sustain the juvenile court's finding in this regard.

### **B. Parent-Child Relationship Posed a Threat to the Children**

Mother contends that KCDCS failed to produce sufficient evidence to establish that a parent-child relationship between her and the Children posed a threat to them. The juvenile court, however, made no such finding. Rather, the juvenile court found that the conditions resulting in the Children's removal would not be remedied, a finding we have just upheld. Indiana Code subsection 31-35-2-4(b)(2)(B) is written in the disjunctive, and the juvenile court need only find *either* that the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the children. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*. We need not address Mother's argument in this regard further.

### **C. Children's Best Interest**

Mother also contends that KCDCS failed to prove by clear and convincing

evidence that termination of her parental rights was in the Children's best interests. We are mindful that in determining what is in the best interests of the Children, the juvenile court is required to look beyond the factors identified by KCDCS and look to the totality of the evidence. *McBride*, 798 N.E.2d at 203. In doing so, the juvenile court must subordinate the interests of the parents to those of the children involved. *Id.* Furthermore, this court has previously determined that the testimony of a guardian *ad litem* ("GAL") regarding the children's need for permanency supports a finding that termination is in the children's best interests. *In the matter of Y.E.C.*, 534 N.E.2d 273, 276 (Ind. Ct. App. 1992).

Here, family case manager Beadles testified that Mother had failed to show that she could appropriately parent the Children and that termination would be in their best interest. The GAL also concluded in her written report that termination of Mother's parental rights was in the Children's best interest and that they be separately placed and adopted in different homes. This evidence alone is sufficient to sustain the juvenile court's finding that termination is in the Children's best interest. *See, e.g., In re T.F.*, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001) (concluding that testimony of GAL and family case manager was sufficient to sustain finding that termination was in the child's best interest). This is not to say, however, that this is the only evidence supporting the juvenile court's determination. Robb, Foley, and Granger all testified regarding problems with visitations, variously noting that they were chaotic, Mother tended to focus on J.S. to the exclusion of the Children, Mother tended to spend a great deal of time smoking and talking on the telephone, and Mother often missed visitation altogether. Beadles noted a

drop in A.S.'s grades following an extended visit with Mother. The record contains ample evidence to sustain the juvenile court's finding that termination is in the Children's best interest.

The judgment of the juvenile court is affirmed.

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