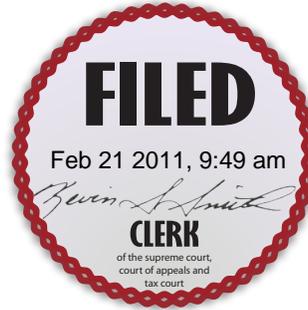


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE MATTER OF THE TERMINATION OF )  
THE PARENT-CHILD RELATIONSHIP OF T.G., )  
A CHILD, AND P.D.G., THE CHILD’S PARENT. )

P.D.G. )  
Appellant-Respondent, )

vs. )

INDIANA DEPARTMENT OF CHILD SERVICES, )  
VANDERBURGH COUNTY OFFICE, )  
Appellee-Petitioner. )

No. 82A05-1007-JT-465

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APPEAL FROM THE VANDERBURGH SUPERIOR COURT

The Honorable Brett J. Niemeier, Judge

Cause No. 82D01-0910-JT-00056

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**February 21, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Respondent P.D.G. (“Mother”) appeals an order terminating her parental rights to T.G. upon the petition of the Appellee-Petitioner Vanderburgh County Department of Child Services (“DCS”). We affirm.

### **Issue**

Mother presents several issues for our review, which we reorder and restate as:

- I. Whether clear and convincing evidence supports the trial court’s determination that there is a reasonable probability the conditions resulting in the removal from her care will not be remedied, and that the continuation of the parent-child relationship poses a threat to the well-being of T.G.;
- II. Whether clear and convincing evidence supports the trial court’s determination that termination of the parent-child relationship is in the child’s best interest;
- III. Whether there is a satisfactory plan for the care and treatment of the child following the termination of Mother’s parental rights; and
- IV. Whether the trial court abused its discretion in denying Mother’s request to transfer DCS services to another county?

### **Facts and Procedural History**

Mother is the biological parent of T.G., who was born on December 26, 2007. On August 11, 2008, DCS filed a petition alleging that T.G. was a Child in Need of Services (CHINS) based on Mother’s and T.G.’s father’s failure to supply T.G. with necessary supervision and food.<sup>1</sup> DCS’s investigation prompting its CHINS petition revealed that, on July 29, 2008, Mother took T.G. to the home of Karen Sandefur (“Sandefur”), who is T.G.’s

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<sup>1</sup> T.G.’s biological father voluntarily relinquished his parental rights during the underlying proceedings and is not an active party to this appeal.

biological father's cousin, with the understanding that Sandefur would adopt T.G. According to Sandefur, Mother had been looking for families that were interested in adopting T.G. On August 1, 2008, T.G. was taken to the doctor, who determined that T.G. was failing to thrive based on the fact that he was two rounds behind in vaccinations and had not gained any weight since his last doctor's visit four months prior and still weighed seventeen pounds. DCS met with Mother at her house on August 5, 2008, and discovered that she had no crib (it had been loaned out), no toys, and no food. She had only a small, partially full bag of diapers, a box of wipes, and some clothing for T.G.

The trial court found T.G. to be a CHINS on December 15, 2008, and ordered that he remain placed with Sandefur. A dispositional hearing was held on January 6, 2009, and Mother was ordered to pay \$30.00 per week in child support and comply with DCS services. On October 7, 2009, DCS filed a petition to terminate Mother's parental rights. DCS moved to suspend services on November 3, 2009, and the trial court granted the request except for parenting time. Mother then left Evansville for Bloomfield, Indiana after Thanksgiving in November 2009 to be with her father, and, while there, experienced medical problems and never returned. The trial court held a hearing on termination of Mother's parental rights on February 18, 2010, and March 15, 2010, and on June 16, 2010, it issued an order granting DCS's petition. She now appeals

## **Discussion and Decision**

### Standard of Review

We begin our review by acknowledging that this court has long had a highly

deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the termination of parental rights, we will neither reweigh the evidence nor judge witness credibility. 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 most favorable to the judgment. Id. Moreover, 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.

In terminating Mother's parental rights, the trial court entered specific findings and conclusions. When a trial court's judgment contains specific findings of fact and conclusions thereon, we apply a two-tiered standard of review. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

#### Analysis

"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. However, a trial court must subordinate

the interests of the parent to those of the child when evaluating the circumstances surrounding a termination. K.S., 750 N.E.2d at 837. Termination of a parent-child relationship is proper where a child's emotional and physical development is threatened. Id. Although the right to raise one's own child should not be terminated solely because there is a better home available for the child, parental rights may be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. Id. at 836.

Before an involuntary termination of Mother's parental rights could occur, DCS was required to allege and prove, among other things:

- (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; [and]
  
- (C) termination is in the best interests of the child . . . .

Ind. Code § 31-35-2-4(b)(2)(B) and (C) (2008).<sup>2</sup> "The State's burden of proof in termination of parental rights cases is one of 'clear and convincing evidence.'" In re G.Y., 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting I.C. § 31-37-14-2). If the court finds the allegations in a petition described in section 4 of this chapter are true, the court shall terminate the parent-child relationship. I.C. § 31-35-2-8(a). Mother challenges the court's findings as to subsections (b)(2)(B) and (C) of the termination statute cited above. See I.C. § 31-35-2-4.

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<sup>2</sup> Indiana Code section 31-35-2-4 was amended by Pub. L. No. 21-2010, § 8 (eff. March 12, 2010). The changes to the statute became effective after the filing of the termination petition involved herein and are not applicable to this case.

*Conditions Not Remedied and Threat to T.G.'s Well-being*

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) was written in the disjunctive at the time this case was filed. The trial court therefore needed only to find one of the two [now three] requirements of subsection (b)(2)(B) had been established by clear and convincing evidence. See L.S., 717 N.E.2d at 209. Because we find it to be dispositive under the facts of this case, we only consider whether DCS established, by clear and convincing evidence, that there is a reasonable probability that the conditions resulting in T.G.'s removal and continued placement outside Mother's care will not be remedied. See I.C. § 31-35-2-4(b)(2)(B)(i).

A trial court must judge a parent's fitness to care for his or her child 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. The trial 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 & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. The trial court may also consider any services offered to the parent by the county department of child services, and the parent's response to those services, as evidence of whether conditions will be remedied. Id. at 1252.

In recommending termination of parental rights, Melanie Reising, a case manager with

the Department of Child Services, testified that during the life of the case Mother lived in eleven different locations, held several different jobs (a fair number of which were at exotic dancing establishments), and has not shown the stability necessary to parent a child. Mother has also not fully participated in the parental services DCS offered, missing thirty-three case visits and not completing therapy or a psychological evaluation. Ms. Reising “frequently” had problems reaching Mother on the phone because of her changing residences, different cell phones, and the fact that she also gave Ms. Reising the cell phone numbers of friends as her contact information. Tr. 171. Moreover, Mother expressed to Ms. Reising her desire to have others adopt T.G., and after DCS filed an Information for Contempt of the Parental Participation Plan, she represented to the trial court that she wished to voluntarily relinquish her parental rights.<sup>3</sup> Mother also moved away from Evansville where T.G. resides, making it more difficult for her to visit him.

According to Ms. Reising, there was only one point at which DCS considered increasing Mother’s contact. Mother was maintaining an apartment on the westside of Evansville, and DCS considered moving towards monitored visits with Mother with the idea that T.G. would eventually move back in with her. However, this option was ultimately rejected because problems with alcohol were apparent, and Mother admitted to drinking because she had to accept drinks from men at her place of employment. She also had a boyfriend at the time, and DCS advised her that it had problems with his criminal history.

Beth Anderson, a volunteer coordinator with the Vanderburgh County Office of Court

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<sup>3</sup> DCS dismissed the Information for Contempt, and Mother never voluntarily relinquished her rights.

Appointed Special Advocates (CASA), echoed Ms. Reising's concerns. Ms. Anderson also recommended terminating Mother's parental rights. She stated that Mother has "pretty much abandoned" T.G. and added that Mother's alleged absence due to medical treatment does not alter her opinion. Tr. 175, 187.

DCS also presented evidence that Mother made only one payment of \$25.00 in child support during the case, even though she was ordered to pay \$30.00 per week. As of October 9, 2009, she was \$1205.00 behind in payments for T.G., and \$2,410.00 behind for both of her children. Mother has also lost custody of her daughter, and is currently pregnant with another child. Although Mother currently has somewhat stable transitional housing in Hope House where she also does some unpaid office work, she spends her other time researching housing options, but has yet to put in a housing application anywhere. She also researches potential career paths such as neurology, believing that in order to be a neurologist, she needs to first be a Certified Nursing Assistant (CNA), then a registered nurse, and then a doctor. She also remains without a GED and four credits shy of a degree in "paralegalism," without a driver's license, and, according to her, unable to work due to a medical disability. Tr. 24-25, 32, 51.

As noted earlier, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child. D.D., 804 N.E.2d at 266. However, where there are only temporary improvements and a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the

circumstances, the problematic situation will not improve.” In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). Here, DCS presented substantial evidence demonstrating Mother’s lack of employment, housing instability, and unwillingness to comply with DCS services. We therefore conclude that the trial court’s findings and ultimate determination that there is a reasonable probability the conditions resulting in T.G.’s removal and continued placement outside Mother’s care will not be remedied are supported by clear and convincing evidence. Mother’s arguments to the contrary, emphasizing her medical problems and current relative stability at Hope House rather than the evidence relied upon by the trial court, amount to an invitation to reweigh the evidence, which we will not do. D.D., 804 N.E.2d at 265; see also Bergman v. Knox County Office of Family & Children, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding trial court permitted to give more weight to abundant evidence of mother’s pattern of conduct in neglecting children during years prior to termination hearing than to mother’s testimony of recently improved conditions).

*Best Interests*

We next consider Mother’s assertions that the trial court erred in determining that termination of her parental rights is in T.G.’s best interests. In determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Indiana Department of Child Services to the totality of the evidence. McBride v. Monroe County Office of Family & Children, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. Id. The court need not wait until a child is irreversibly harmed before terminating the parent-child

relationship. Id. When the evidence shows that a child’s emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). Moreover, we have previously held that the recommendations of both the case manager and child advocate to terminate parental rights, coupled with evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child’s best interests. In re M.M., 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

Here, as previously noted, both Mother’s case manager and T.G.’s CASA recommended termination of parental rights. Clear and convincing evidence also supports the conclusion that the conditions resulting in removal of T.G. will not be remedied. Moreover, T.G. has been in his current placement for eighteen months and is very healthy. He is also able to visit with his sister, which he would not be able to do as easily if Mother moved him to Bloomfield. While Mother has relatively stable housing at the moment, she has not made any applications for permanent housing options and has not secured gainful employment. She has also left transitional housing in the past for a man, and currently has a new friend, “Kenny.” Tr. 153, 279. Mother is also pregnant again (by Kenny), which will further tax her limited resources and ability to raise T.G. Based on the totality of the evidence, we do not find that the trial court clearly erred in concluding that it is in T.G.’s best interests to have Mother’s parental rights permanently terminated.

### *Plan for the Child*

Finally, because Mother argues that her father (T.G.'s grandfather) should have been allowed to adopt T.G. and maintains the trial court erred in Conclusion 6e, we consider whether sufficient evidence supports the trial court's determination that DCS has a satisfactory plan for the care and treatment of the children. Indiana Code section 31-35-2-4(b)(2)(D) provides that before a trial court may terminate a parent-child relationship, it must find there is a satisfactory plan for the future care and treatment of the child. Id.; see also D.D., 804 N.E.2d at 268. DCS's plan is for T.G. to be adopted by Karen Sandefur, who is the cousin of T.G.'s biological father and who has been serving as T.G.'s foster parent, and in whose home T.G. has been living and thriving during the pendency of this action. DCS's plan is satisfactory. See Castro v. State Office of Family & Children, 842 N.E.2d 367, 378 (Ind. Ct. App. 2006) (stating adoption is generally a satisfactory plan for the care and treatment of children after termination of parental rights), trans. denied.

### *Motion to Transfer Services*

Mother also argues that the trial court abused its discretion when it denied her request for transfer of services. However, she does not cite to this request in the record or develop this argument in her brief. Regardless, while the Department of Child Services is generally required to make reasonable efforts to preserve and reunify families during CHINS proceedings, the CHINS provision is not an element of our parental rights termination statute, and a failure to provide family services does not alone serve to negate a necessary element of the termination statute that would require reversal. I.C. § 31-34-21-5.5; In re E.E., 736

N.E.2d 791, 796 (Ind. Ct. App. 2000). Moreover, as previously discussed, Mother did not take advantage of the services DCS provided her, and by the time she moved to Bloomfield, DCS services were suspended except for parenting time. Therefore, we do not find that the trial court abused its discretion in denying her request to transfer services to another county.

### **Conclusion**

This Court will reverse a termination of parental rights “only upon a showing of ‘clear error’— that which leaves us with a definite and firm conviction that a mistake has been made.” In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (quoting Egly v. Blackford County Dep’t of Public Welfare, 592 N.E.2d 1232, 1235 (Ind. 1992)). We find no such error here.

Affirmed.

NAJAM, J., and DARDEN, J., concur.